

OPEN MEETING ITEM

5/14/09



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



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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

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

Arizona Corporation Commission

DOCKETED

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

MAY - 7 2009

DATE: April 30, 2009

DOCKETED BY *[Signature]*

RECEIVED
2009 MAY - 1 A 9:53
AZ CORP COMMISSION
DOCKET CONTROL

RE: Proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties against Dan Wise, Whispering Winds Properties, et al. Docket No. S-20657A-09-0089

CC: Michael P. Kearns, Interim Executive Director

On February 27, 2009, the Securities Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties and for Other Affirmative Action ("Notice") against respondents Dan Wise (a/k/a "Danny Wise" and "Dan R. Wise") ("Wise"), Whispering Winds Properties, L.L.C. ("WWP"), LM Beagle Properties, L.L.C., Karlana, Inc., Axis International, Inc. (collectively "Respondents") and Cynthia Wise ("Spouse"). Respondents and Spouse failed to appear or defend this matter within the required time limits.

Attached for your consideration is a proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order"). The Order finds that from July 17, 2001 to January 2009, Respondents sold 270 unregistered securities within and from Arizona to 125 investors residing in Arizona and 12 other states. Respondents promised to use investor money to fund short-term real estate loans.

After the Division filed its Notice, the U.S. Securities and Exchange Commission ("SEC") obtained a Preliminary Injunction Order against all Respondents on April 10, 2009 that freezes Respondents' assets, such as their bank accounts, computers and business records. The Injunction further orders an accounting of Respondents' business operations and the investments at issue ("SEC Action"). (See, CV-09-676-PHX-ROS). The SEC also filed a complaint in the SEC Action against Respondents that mirrors the factual and legal allegations of the Order.

As set forth at paragraph 27 of the Order, Wise and WWP are also debtors in pending Chapter 7 bankruptcies. Like the SEC Action, Respondents' assets in the bankruptcies are being analyzed, seized and liquidated for the benefit of investors with assistance from appointed computer analysts, appraisers, auctioneers and other bankruptcy and financial experts.

The Division has, and will continue to assist these and other federal and state agencies as appropriate for the protection of investors.

Here, the Order finds that Respondents violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by selling unregistered securities while not being registered as securities salesman or dealers, or exempt from registration. The Order also finds that Respondents committed violations of the anti-fraud provision of the Act, A.R.S. § 44-1991.

The Order requires Respondents to permanently cease and desist from violating the Act. The Order further requires Respondents and the marital community of Wise and Spouse to pay full restitution totaling \$66,992,448.91 and a \$5,400,000 administrative penalty.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

In the matter of)	DOCKET NO. S-20657A-09-0089
DAN WISE (a/k/a "DANNY WISE" and "DAN R. WISE") and CYNTHIA WISE, husband and wife,)	DECISION NO. _____
WHISPERING WINDS PROPERTIES, L.L.C., an Arizona limited liability company,)	ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION AND ORDER FOR ADMINISTRATIVE PENALTIES AGAINST:
LM BEAGLE PROPERTIES, L.L.C., a Nevada limited liability company,)	DAN WISE and CYNTHIA WISE
KARLENA, INC., a Nevada corporation,)	WHISPERING WINDS PROPERTIES, L.L.C.
AXIS INTERNATIONAL, INC., an Arizona corporation,)	LM BEAGLE PROPERTIES, L.L.C.
Respondents.)	KARLENA, INC.
)	AXIS INTERNATIONAL, INC.

17 **I.**

18 **FINDINGS OF FACT**

19 1. On February 27, 2009, the Securities Division ("Division") of the Arizona
20 Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding
21 Proposed Order to Cease and Desist, Order For Restitution, Order For Administrative Penalties
22 and for Other Affirmative Action ("Notice") against respondents: (1) DAN WISE (a/k/a
23 "DANNY WISE" and "DAN R. WISE") ("WISE") and his spouse CYNTHIA WISE
24 ("SPOUSE"); (2) WHISPERING WINDS PROPERTIES, L.L.C. ("WWP"); (3) LM BEAGLE
25 PROPERTIES, L.L.C. ("BEAGLE"); (4) KARLENA, INC. ("KARLENA"); and (5) AXIS
26 INTERNATIONAL, INC. ("AXIS").

1 2. The Notice specified in two separate places and, in particular, on the first page in
2 capitalized, bold print that respondents had 10 days to request a hearing, and 30 days to file an
3 answer.

4 3. The Notice was personally served on respondents WISE, WWP, BEAGLE,
5 KARLENA and AXIS on March 5, 2009.

6 4. The Notice was personally served on SPOUSE on March 24, 2009.

7 5. Respondents did not request a hearing or file an answer within the required time
8 limits. Respondents did not properly appear in or defend this action despite their actual notice of
9 all aspects of the same.¹

10 6. At all times relevant, WISE was a married man who resided in Scottsdale, Arizona.

11 7. At all times relevant, WWP was an Arizona limited liability company that conducted
12 business within and from Scottsdale, Arizona. At all times relevant, WISE conducted business
13 through WWP as its owner and managing member.

14 8. At all times relevant, BEAGLE was a Nevada limited liability company that
15 conducted business within and from Scottsdale, Arizona. At all times relevant, WISE conducted
16 business through BEAGLE as its owner and managing member.

17 9. At all times relevant, respondent KARLENA was a Nevada corporation that
18 conducted business within and from Scottsdale, Arizona. At all times relevant, WISE conducted
19 business through KARLENA as its owner, president, chief executive officer and director.

20 10. At all times relevant, respondent AXIS was an Arizona corporation that conducted
21 business within and from Scottsdale, Arizona. At all times relevant, WISE conducted business
22 through AXIS as its owner, president, chief executive officer and director.

23 11. At all times relevant, respondent SPOUSE was married to WISE.

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25

26 ¹ WISE, WWP, BEAGLE, KARLENA and AXIS were in default of this matter on April, 6, 2009. SPOUSE was in default of this matter on April 24, 2009.

1 12. At all times relevant, WISE acted for his own benefit and for the benefit, and in
2 furtherance of WISE and SPOUSE's marital community.

3 13. WISE, WWP, BEAGLE, KARLENA and AXIS may be referred to hereafter
4 collectively as "RESPONDENTS" as the context requires.

5 14. WWP, BEAGLE, KARLENA and AXIS may be referred to hereafter collectively as
6 the "WISE COMPANIES" as the context requires.

7 15. From on or about July 17, 2001 to January, 2009, RESPONDENTS offered and
8 sold securities within and from Arizona in the form of notes.

9 16. WISE represented to investors that RESPONDENTS would use their money to
10 fund real estate loans to, "borrowers who cannot or do not want to meet stringent lending
11 guidelines."

12 17. WISE described the underlying investor funded loans to investors as short-term,
13 renewable deals (the "Deals"). WISE represented to investors that the Deals were fully secured
14 by: (a) real estate such as commercial buildings, residential homes and land; (b) "liquid assets"
15 such as brokerage and trust accounts; and (c) "fixed assets" such as rare art, jewelry and
16 commodities (collectively the "Collateral").

17 18. The terms of the note investments varied, and stated profits ranging from 3 to 20%
18 per year.

19 19. RESPONDENTS documented the note investments in two ways. First,
20 RESPONDENTS prepared and provided investors with unsecured promissory notes signed by: (a)
21 WISE individually; or (b) WISE individually and on behalf of one of the WISE COMPANIES.

22 20. RESPONDENTS also prepared and provided investors with a one-page "Deal
23 Summary." Note investments were generically described in the Deal Summaries with acronyms
24 such as, without limitation: (a) "Deal RCC-65;" (b) "Deal RW-67;" (c) "Deal SZ-84;" (d) "Deal
25 BV-5593;" (e) "Deal GHH-6;" (f) "Deal KP-9;" (g) "Deal NN-76;" and (h) "Deal HN-812." Deal
26

1 Summaries provided to the Securities Division of the Commission by RESPONDENTS and
2 investors identify 270 separate Deals funded with investor money.

3 21. Upon the conclusion of a note investment, RESPONDENTS frequently “rolled”
4 investors’ principal investments and paper-profits into new investments (the “Roll-Over
5 Investments”). Investors often added new money to the Roll-Over Investments. Investors often
6 rolled their investment monies into many additional Roll-Over Investments over an extended
7 period of time without taking distributions.

8 22. Thus, in addition to Deal acronyms, Deal Summaries identified: (a) note investment
9 dates; (b) principal investment money; (c) accrued “paper” profits/interest; (d) investor monies
10 transferred and/or added to Roll-Over Investments; and (e) any actual cash distributions made by
11 RESPONDENTS to investors.

12 23. RESPONDENTS managed all aspects of the note investments and, without limitation,
13 negotiated the terms and conditions of the Deals. WISE deposited investor money into Arizona
14 bank accounts owned and controlled by the RESPONDENTS. At WISE’s direction, investors also
15 often wired their investment funds directly into RESPONDENTS’ Arizona bank accounts.

16 24. WISE promised investors that their note investments were: (a) secure; and/or (b)
17 safe.

18 25. The investors’ note investments were not secure because RESPONDENTS did not
19 assign investors a security interest in any Collateral associated with the underlying Deals.

20 26. RESPONDENTS further failed to inform investors that their note investments were
21 not safe because: (a) the Collateral underlying the Deals is subject to unpredictable market
22 fluctuations and/or declines; (b) the ability of the Deal-related borrowers to repay
23 RESPONDENTS could be negatively impacted by unpredictable, expensive and time consuming
24 civil and bankruptcy litigation; and (c) investors could lose all or a vast portion of their
25 investments because RESPONDENTS did not assign investors a security interest in any Collateral
26 associated with the Deals.

1 27. At present, both WISE and WWP are debtors in consolidated Chapter 7
2 bankruptcies in which many note investment investors are creditors, and in which the note
3 investments and underlying Deals are being litigated. (See, 2:08-BK-15620 (RJH)).
4 RESPONDENTS are also defendants in approximately twenty-one pending and concluded state
5 and federal civil lawsuits involving the note investments.

6 28. WISE solicited some of RESPONDENTS' investors by virtue of the fact that WISE
7 had acted as their accountant ("CPA"). At all times relevant, WISE was licensed as a CPA by the
8 Arizona State Board of Accountancy, Certificate 8957-R. WISE also held CPA Firm Registration
9 No. 4534-S. WISE's CPA licenses were revoked by his consent on December 10, 2008 for
10 misappropriating \$2,578,230 from five of his tax clients and investors. (See, Office of
11 Administrative Hearing Docket & Arizona State Board of Accountancy File Nos. 2009.004,
12 2009.008, 2009.010, 2009.012 & 2009.030).

13 29. During the offering period, RESPONDENTS sold hundreds of note investments
14 totaling \$67,782,698.69 to 125 investors residing in 13 states, including: (a) Arizona; (b)
15 California; (c) Colorado; (d) Connecticut; (e) Delaware; (f) Florida; (g) Kansas; (h) Pennsylvania;
16 (i) Maryland; (j) New Jersey; (k) New York; (l) North Carolina; and (m) Texas.

17 30. Of this amount, note investments totaling: (a) \$3,460,370.21 were jointly and
18 severally issued and sold by WISE and WWP; (b) \$300,000 were jointly and severally issued and
19 sold by WISE and KARLENA; (c) \$7,183,119.90 were jointly and severally issued and sold by
20 WISE and BEAGLE; (d) \$400,000 were jointly and severally issued and sold by WISE and AXIS;
21 and (e) \$56,439,208.58 were issued and sold by WISE in his individual capacity.

22 31. Considering known repayments made by: (a) WISE individually totaling
23 \$680,249.78 and (b) WISE and BEAGLE, jointly and severally, totaling \$110,000,
24 RESPONDENTS owe investors at \$66,992,448.91.

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II.

CONCLUSIONS OF LAW

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

5 2. RESPONDENTS and SPOUSE did not request a hearing pursuant to A.R.S. § 44-
6 1972, nor did they file an answer pursuant to A.A.C. R14-4-305.

7 3. RESPONDENTS offered or sold securities within or from Arizona, within the
8 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

9 4. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
10 were neither registered nor exempt from registration.

11 5. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
12 neither registered as dealers or salesmen nor exempt from registration.

13 6. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
14 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
15 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
16 or deceit. RESPONDENTS' conduct included:

17 A. Misrepresenting to investors that their note investments were secure, when
18 RESPONDENTS did not assign investors a security interest in Collateral associated
19 with the underlying Deals; and

20 B. Representing to investors that their note investments were safe, while failing to
21 disclose to them that their investments were not safe because: (a) the Collateral
22 (*i.e.*, real estate, brokerage accounts, etc.) underlying the Deals is subject to
23 unpredictable market fluctuations and/or declines; (b) the Deals, Collateral and the
24 ability of the Deal-related borrowers to repay RESPONDENTS could be negatively
25 impacted by unpredictable, expensive and time consuming civil and bankruptcy
26 litigation; and (c) investors could lose all or a vast portion of their investments

1 because RESPONDENTS did not assign investors a security interest in any
2 Collateral associated with the Deals.

3 7. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to
4 A.R.S. § 44-2032.

5 8. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.
6 § 44-2032.

7 9. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. §
8 44-2036.

9 10. WISE acted for the benefit and in furtherance of his marital community with
10 SPOUSE and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and
11 administrative penalties is a debt of WISE and SPOUSE's marital community.

12 **III.**

13 **ORDER**

14 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the
15 Commission finds that the following relief is appropriate, in the public interest, and necessary for
16 the protection of investors:

17 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and any of their
18 agents, employees, successors and assigns, permanently cease and desist from violating the
19 Securities Act.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that WISE, WISE and
21 SPOUSE's marital community and the WISE COMPANIES shall, jointly and severally, pay
22 restitution to the Commission in the amount of \$66,992,448.91: (a) WISE and WISE and
23 SPOUSE's marital community shall be liable for \$66,992,448.91; (b) BEAGLE shall be liable for
24 \$7,073,119.90; (c) WWP shall be liable for \$3,460,370.21; (d) AXIS shall be liable for \$400,000;
25 and (e) KARLENA shall be liable for \$300,000. Payment shall be made in full within 60 days of
26 the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum

1 from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to
2 be placed in an interest-bearing account controlled by the Commission. The Commission shall
3 disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any
4 restitution funds that the Commission cannot disburse because an investor refuses to accept such
5 payment, or any restitution funds that cannot be disbursed to an investor because the investor is
6 deceased and the Commission cannot reasonably identify and locate the deceased investor's
7 spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata
8 basis to the remaining investors shown on the records of the Commission. Any funds that the
9 Commission determines it is unable to or cannot feasibly disburse shall be transferred to the
10 general fund of the state of Arizona.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that WISE, the WISE
12 COMPANIES and WISE and SPOUSE's marital community shall, jointly and severally, pay an
13 administrative penalty in the amount of \$5,400,000. Payment shall be made to the "State of
14 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the
15 date of this Order until paid in full. The payment obligations for these administrative penalties
16 shall be subordinate to any restitution obligations ordered herein and shall become immediately
17 due and payable only after restitution payments have been paid in full or upon RESPONDENTS'
18 or SPOUSE's default with respect to their restitution obligations.

19 IT IS FURTHER ORDERED that if any of the RESPONDENTS or SPOUSE fail(s) to
20 comply with this Order, any outstanding balance shall be in default and shall be immediately due
21 and payable without notice or demand. The acceptance of any partial or late payment by the
22 Commission is not a waiver of default by Commission.

23 IT IS FURTHER ORDERED that default shall render RESPONDENTS or SPOUSE liable
24 to the Commission for its costs of collection and interest at the maximum legal rate.

25 IT IS FURTHER ORDERED, that if any of the RESPONDENTS or SPOUSE fail to
26 comply with this order, the Commission may bring further legal proceedings against the

1 RESPONDENT(S) or SPOUSE, including application to the superior court for an order of
2 contempt.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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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
May, 2009.

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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

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DISSENT

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DISSENT

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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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(MD)