

OPEN MEETING ITEM

6/11/09



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



SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

CONFIDENTIAL

MEMORANDUM

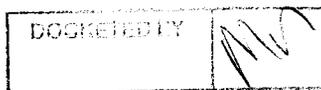
TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

JUN 8 2009

FROM: Mark Dinell *MD*
Assistant Director of Securities



DATE: May 27, 2009

RE: Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by Gerald Edwin Patchen II (S-20638A-08-0566)

CC: Michael P. Kearns, Interim Executive Director

AZ CORP COMMISSION
DOCKET CONTROL

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Attached is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by Gerald Edwin Patchen II ("Patchen"). The Order requires Patchen to cease and desist his activity, repay the funds raised from investors in the amount of \$863,045 and pay an administrative penalty in the amount of \$125,000.

Beginning about July 2006 and while working as a loan officer, Patchen offered and sold securities in the form of promissory notes to forty-eight Arizona investors. Patchen represented to prospective investors, whom he met through his contacts with real estate professionals and advertisements placed on the Internet, that the investment opportunity involved investors providing Patchen's mortgage clients with sufficient funds to enable the clients to qualify for a home mortgage and/or to cover the closing costs associated with the purchase of a home.

The Order finds that Patchen violated A.R.S. §§44-1841, 44-1842 and 44-1991 by selling unregistered securities while being unlicensed and making untrue statements or misleading omissions of material facts. The Division believes that this Consent Order is appropriate to protect the public welfare.

Originator: William W. Black

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

8 In the matter of:

9 GERALD EDWIN PATCHEN II and JANE
10 DOE PATCHEN, husband and wife,

11 Respondents.

) DOCKET NO. S-20638A-08-0566

) DECISION NO. _____

) **ORDER TO CEASE AND DESIST, ORDER**
) **OF RESTITUTION, ORDER FOR**
) **ADMINISTRATIVE PENALTIES AND**
) **CONSENT TO SAME**
) **BY: RESPONDENT GERALD EDWIN**
) **PATCHEN II**

12 Respondent GERALD EDWIN PATCHEN II ("Respondent") elects to permanently waive
13 any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S.
14 § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order of
15 Restitution, Order for Administrative Penalties and Consent to Same ("Order"). Respondent
16 admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits
17 nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to
18 the entry of this Order by the Commission.
19

20 **I. FINDINGS OF FACT**

- 21 1. Respondent GERALD EDWIN PATCHEN II ("PATCHEN") has, at all times
22 material hereto, been a resident of Arizona.
- 23 2. PATCHEN, at all times material hereto, has not been married.
- 24 3. PATCHEN offered and sold securities from Arizona in the form of promissory
25 notes since at least July 12, 2006 to forty eight investors in an amount totaling \$863,045.
26

1 4. At all times material hereto, PATCHEN has not been registered as a dealer.

2 5. PATCHEN solicited potential Arizona investors through his employment as a loan
3 officer, his contacts with real estate professionals and advertisements placed on an internet website
4 known as Craig's List/Phoenix ("Craig's List").

5 6. One such advertisement posted by PATCHEN on Craig's List on October 19, 2008
6 stated:

7 Tired of the Stock Market? Tired of making 2-3% on
8 your savings account money? I am looking for investors to
 fund smaller deals that are very safe and pay very well.
 Are you interested?

9 7. After seeing the advertisement, at least one potential Arizona investor ("PAI")
10 responded to the advertisement and spoke to PATCHEN who identified himself as a mortgage
11 broker.

12 8. PATCHEN is not licensed in Arizona as a mortgage broker.

13 9. PATCHEN explained to the PAI and other investors that the investment opportunity
14 involved providing PATCHEN's mortgage clients with the funds necessary to enable the clients to
15 qualify for a home mortgage and/or to cover the closing costs associated with the purchase of a
16 home.

17 10. According to PATCHEN, in exchange for their investment, investors would receive
18 a promissory note executed by PATCHEN.

19 11. During a meeting with the PAI, PATCHEN provided the PAI with a blank
20 promissory note.

21 12. PATCHEN indicated that he used the promissory note in transactions involving
22 investors. The promissory note sets forth that any amounts loaned would be secured by a deed of
23 trust and assignment of rents on real property.

24 13. PATCHEN further explained to the PAI and others that PATCHEN would be
25 responsible for collecting from the client to whom the funds had been lent, the amount set forth in
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1 the promissory note that consisted of the principal investment amount, plus a return of not less than
2 25% of the principal amount invested.

3 14. PATCHEN offered the PAI and others various returns including payment of \$4,000
4 on an initial investment of \$3,000; payment of \$7,000 on an initial investment of \$5,000; and
5 payment of \$5,000 on an initial investment of \$3,500.

6 15. According to PATCHEN, the time period for the repayment to be made by him of
7 the principal amount and promised return in each instance was no more than thirty days.

8 16. PATCHEN failed to disclose to the PAI and others that, according to documents
9 filed in Maricopa County Superior Court, at least three investors had been awarded judgments
10 against PATCHEN for his failure to repay amounts due under the terms of promissory notes. The
11 underlying promissory notes, upon which the judgments are based, are signed by PATCHEN.

12 17. PATCHEN failed to disclose to the PAI and others that investors, in addition to
13 those who had obtained judgments for PATCHEN's failure to repay amounts due, had not been
14 paid their promised returns and/or not repaid their principal amount invested.

15 18. PATCHEN failed to secure the promissory notes given to investors with a deed of
16 trust and assignment of rents on real property pursuant to the terms set forth in the promissory
17 notes.

18 19. PATCHEN used investors' funds to repay other investors and for his own personal
19 use and benefit.

20 20. Many of PATCHEN's clients, who he represented to investors as seeking funds to
21 pay closing costs in connection with residential home loans, were fictitious.

22 II. CONCLUSIONS OF LAW

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

25 2. Respondent offered or sold securities within or from Arizona, within the meaning of
26 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

1 that the following relief is appropriate, in the public interest, and necessary for the protection of
2 investors:

3 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
4 agents, employees, successors and assigns, permanently cease and desist from violating the
5 Securities Act.

6 IT IS FURTHER ORDERED that Respondent complies with the attached Consent to Entry
7 of Order.

8 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent shall pay
9 restitution to the Commission in the amount of \$863,045. Payment shall be made in full on the
10 date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum
11 from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to
12 be placed in an interest-bearing account controlled by the Commission. The Commission shall
13 disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any
14 restitution funds that the Commission cannot disburse because an investor refuses to accept such
15 payment, or any restitution funds that cannot be disbursed to an investor because the investor is
16 deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse
17 or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to
18 the remaining investors shown on the records of the Commission. Any funds that the Commission
19 determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the
20 state of Arizona.

21 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that Respondent shall pay an
22 administrative penalty in the amount of \$125,000. Payment shall be made to the "State of
23 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the
24 date of this Order until paid in full. The payment obligations for these administrative penalties
25 shall be subordinate to any restitution obligations ordered herein and shall become immediately
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1 due and payable only after restitution payments have been paid in full or upon Respondent's
2 default with respect to Respondent's restitution obligations.

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

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

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

11
12 _____
CHAIRMAN

COMMISSIONER

13
14 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

15
16 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
17 Interim Executive Director of the Arizona Corporation
18 Commission, have hereunto set my hand and caused the
19 official seal of the Commission to be affixed at the
20 Capitol, in the City of Phoenix, this _____ day of
_____, 2009.

21 _____
MICHAEL P. KEARNS
22 INTERIM EXECUTIVE DIRECTOR

23 _____
DISSENT

24 _____
25 DISSENT

1 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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CONSENT TO ENTRY OF ORDER

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1. GERALD EDWIN PATCHEN II (“Respondent”), an individual, admits the jurisdiction of the Commission over the subject matter of this proceeding. Respondent acknowledges that Respondent has been fully advised of Respondent’s right to a hearing to present evidence and call witnesses and Respondent knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order To Cease And Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same (“Order”) constitutes a valid final order of the Commission.

2. Respondent knowingly and voluntarily waives any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent understands and acknowledges that Respondent has a right to seek counsel regarding this Order, and that Respondent has had the opportunity to seek counsel prior to signing this Order. Respondent acknowledges and agrees that, despite the foregoing, Respondent freely and voluntarily waives any and all right to consult or obtain counsel prior to signing this Order.

5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order. Respondent agrees that Respondent shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the state to engage in the practice of any business or profession.

1 6. By consenting to the entry of this Order, Respondent agrees not to take any action
2 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
3 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
4 factual basis. Respondent will undertake steps necessary to assure that all of Respondent's agents
5 and employees understand and comply with this agreement.

6 7. While this Order settles this administrative matter between Respondent and the
7 Commission, Respondent understands that this Order does not preclude the Commission from
8 instituting other administrative or civil proceedings based on violations that are not addressed by
9 this Order.

10 8. Respondent understands that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. Respondent understands that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. Respondent agrees that Respondent will not exercise any control over any entity
17 that offers or sells securities or provides investment advisory services within or from Arizona at
18 any time in the future.

19 11. Respondent agrees that Respondent will not sell any securities in or from Arizona
20 without being properly registered in Arizona as a dealer or salesman, or exempt from such
21 registration; Respondent will not sell any securities in or from Arizona unless the securities are
22 registered in Arizona or exempt from registration; and Respondent will not transact business in
23 Arizona as an investment adviser or an investment adviser representative unless properly licensed
24 in Arizona or exempt from licensure.

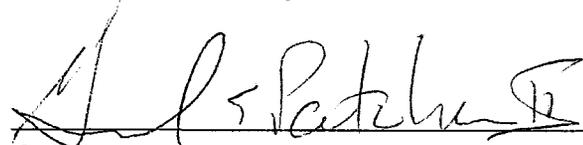
25 12. Respondent consents to the entry of this Order and agrees to be fully bound by its
26 terms and conditions.

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13. Respondent acknowledges and understands that if Respondent fails to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

14. Respondent understands that default shall render Respondent liable to the Commission for its costs of collection and interest at the maximum legal rate.

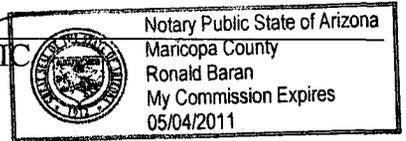
15. Respondent agrees and understands that if Respondent fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondent agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by Commission.


GERALD EDWIN PATCHEN II

STATE OF ARIZONA)
) ss
County of)

SUBSCRIBED AND SWORN TO BEFORE me this 21st day of MAY, 2009.


NOTARY PUBLIC



My commission expires:
05/04/2011