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MAYES PROPOSED AMENDMENT # 1

2009 JUN 10 A 10: 28

OPEN MEETING DATE: June 11, 2009 DATE PREPARED: June 9, 2009, 5: 00 p.m.

AZ CORP COMMISSION

DOCKET CONTROL
 COMPANY: Leonard Francis Alcaro a/k/a/ "Lenny Alcaro" and Mary Brigid Lavin Alcaro, Husband and Wife (Notice of Opportunity); Opinion and Order Pursuant to Application of A.R.S. §44-2031(c).

DOCKET NO. S-20520A-07-0155

AGENDA ITEM NO. S-2

Page 13, lines 14-15, DELETE: "As a result, we must conclude that the marital community should be held liable for the restitution ordered as a result of Mr. Alcaro's violations of the Act."

AND INSERT: "As a result, we conclude that Respondents' marital community is liable for the restitution and administrative penalty amounts ordered in Decision No. 69900."

Page 13, lines 16-26, DELETE: "45. However, on the issue of whether Mrs. Alcaro's interest in the marital community should be held liable for the administrative penalty ordered in Decision No. 69900, the Default Order against her husband, the Division has presented no evidence that Mrs. Alcaro was actively or even passively engaged in activities that violated the Act or any rules of the Commission. Nor did the Division present any evidence that Mrs. Alcaro knew or should have known that her husband's activities violated the Act or the rules of the Commission, or that she was complicit in any way. Due to this lack of evidence and with no clear case law requiring an "innocent spouse" to pay an administrative penalty based upon conduct of the other spouse, we do not believe that it is equitable or reasonable that any portion of Mrs. Alcaro's interest in the marital community should be assessed for any portion of the \$100,000 administrative penalty previously ordered against Mr. Alcaro for his fraudulent actions, as described in Decision No. 69900."

Page 14, lines 11-14, DELETE:

"4. The marital community should be jointly and severally liable for restitution arising from Decision No. 69900 pursuant to A.R.S. §44-2031(C).

5. The interest in the marital community of Mrs. Alcaro should not be held liable for the administrative penalty arising from Decision No. 69900."

AND INSERT: "Mr. Alcaro acted for the benefit and in furtherance of his marital community with Mrs. Alcaro and, pursuant to A.R.S. §25-214 and 25-215, the order of restitution and administrative penalties set forth in Decision No. 69900 are the debts of Mr. and Mrs. Alcaro's marital community."

Page 14, line 16 to page 15, line 3, DELETE: "IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. §44-2032, and pursuant to A.R.S. §44-2031(C), the marital community of Respondents Mary Brigid Lavin Alcaro and Leonard Francis Alcaro, to the extent allowable pursuant to A.R.S. §25-215, jointly and severally, shall make restitution in an amount not to exceed \$403,998.73, which restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal set-offs by the Respondents and confirmed by the Director of Securities, said restitution to be made within 60 days of the effective date of this Decision.

IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the rate of 10 percent per year for the period from the dates of investment to the date of payment of restitution by the Respondents.

IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be deposited into an interest-bearing account(s), if appropriate, until distributions are made.

...

IT IS FURTHER ORDERED that the interest in the marital community of Mary Brigid Lavan Alcaro shall not be held liable for any portion of the administrative penalty ordered in Decision No. 59900."

AND INSERT: "IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2032, that Mr. and Mrs. Alcaro's marital community shall, jointly and severally with Mr. Alcaro under Decision No. 69900, pay restitution to the Commission in the amount of \$403,998.73. Payment shall be made in full within 60 days of the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2036, that Mr. and Mrs. Alcaro's marital community shall, jointly and severally with Mr. Alcaro under Decision No. 69900, pay an administrative penalty in the amount of \$100,000. 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 their restitution obligations.

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

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

IT IS FURTHER ORDERED, that if any of the respondents fail to comply with this order, the Commission may bring further legal proceedings against the respondent(s), including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Decision shall become effective immediately."

Make all conforming changes as necessary.