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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

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In the matter of:

MARK KESLER

Respondent.

) Docket No. S-03491A-02-0000

) SETTLEMENT AGREEMENT AND  
) ORDER RE: SAME BY: MARK KESLER

) DECISION NO. 71300

I. SETTLEMENT AGREEMENT.

1. Plaintiff, the Arizona Corporation Commission ("Commission"), and Defendant Mark Kesler ("Kesler"), parties in the case of *Arizona Corporation Commission v. American National Mortgage Partners L.L.C. et al.*, Maricopa County Superior Court No. CV2003-005724 (the "lawsuit"), desire to resolve the portion of the lawsuit involving them and thus enter into this Settlement Agreement ("Agreement").

2. In settlement of the lawsuit, Kesler elects to permanently waive his right to a trial of the lawsuit. Kesler admits the jurisdiction of the Superior Court over the subject matter of this lawsuit.

3. Kesler consents to the entry of the Proposed Judgment attached as Exhibit B to this Agreement.

4. Kesler neither admits nor denies that he offered and sold interests through ANMP while the interests were not registered and Kesler was not registered to offer and sell securities violating A.R.S. §§ 44-1841, 1842 and 44-2032.

5. Kesler neither admits nor denies that he violated A.R.S. §44-1991, either directly or indirectly, when he offered and sold interest through ANMP. The Commission alleges that Kesler

1 employed devices, schemes or artifices to defraud, made untrue statements of material fact or omitted  
2 to state material facts which were necessary in order to make the statements made not misleading in  
3 light of the circumstances under which they were made and/or engaged in any transaction, practice or  
4 course of business which operated or would operate as a fraud or deceit when Kesler offered and sold  
5 interests in ANMP.

6         6. Kesler acknowledges that he was the subject of a prior Cease and Desist Order of  
7 the Commission, Docket No. S-03491A-02-0000.

8         7. Kesler, pursuant to A.R.S. § 44-2032, agrees that he is to be permanently enjoined  
9 from violating the Securities Act.

10        8. Kesler agrees to entry of judgment against him of \$135,000 in restitution.

11        9. Kesler agrees that the funds paid for restitution will be turned over to the Receiver  
12 assigned to this matter and will be used to fund restitution to investors. If at the time Kesler pays  
13 the restitution amount, the Receiver has already fully repaid investors for their losses, Kesler's  
14 repayment would then go to the state of Arizona general fund.

15        10. Pursuant to A.R.S. § 44-2037, Kesler agrees to pay a civil penalty of \$20,000.

16        11. Pursuant to A.R.S. § 44-2032(1)(a), Kesler agrees to pay \$20,000 for contempt of a  
17 Temporary Cease and Desist Order, Docket No. S-03491A-02-0000, related to the same activities.

18        12. Kesler acknowledges that he has been fully advised of his right to a trial to present  
19 evidence and call witnesses and Kesler knowingly and voluntarily waives any and all rights to a  
20 trial of this matter.

21        13. Kesler knowingly and voluntarily waives any right he may have under to judicial  
22 review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of  
23 Exhibit B, the proposed judgment.

24        14. Kesler acknowledges and agrees that this Agreement is entered into freely and  
25 voluntarily and that no promise was made or coercion used to induce such entry.  
26

1           15.    Kesler understands and acknowledges that he has a right to seek counsel regarding  
2 this Settlement Agreement, and that he has had the opportunity to seek counsel prior to signing this  
3 Settlement Agreement. Kesler acknowledges and agrees that, despite the foregoing, he freely and  
4 voluntarily waives any and all right to consult or obtain counsel prior to signing this Settlement  
5 Agreement.

6           16.    By consenting to the entry of the Judgment, Kesler agrees to refrain from taking any  
7 action or to making, or permitting to be made, any public statement denying, directly or indirectly,  
8 or calculated to create the impression that the legal conclusions contained in Paragraphs 4, 5 and 6  
9 of the Agreement are without merit.

10          17.    While this Order settles the lawsuit between Kesler and the Commission, Kesler  
11 understands that this Order does not preclude the Commission from instituting other administrative  
12 or civil proceedings based on violations that are not addressed by the lawsuit.

13          18.    Kesler understands that this Agreement does not preclude the Commission from  
14 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
15 that may be related to the matters addressed by the lawsuit.

16          19.    Kesler understands that this Agreement does not preclude any other agency or  
17 officer of any governmental agency or its subdivisions from instituting administrative, civil or  
18 criminal proceedings that may be related to matters addressed by this Agreement or the lawsuit.

19          20.    Kesler agrees that he will not apply to the state of Arizona for registration as a  
20 securities dealer or salesman or for licensure as an investment adviser or investment adviser  
21 representative at any time in the future.

22          21.    Kesler agrees that he will not exercise any control over any entity that offers or sells  
23 securities or provides investment advisory services within or from Arizona at any time in the  
24 future.

25          22.    Kesler agrees that he will not sell any securities in or from Arizona without being  
26 properly registered in Arizona as a dealer or salesman, or exempt from such registration;

1 Respondent will not sell any securities in or from Arizona unless the securities are registered in  
2 Arizona or exempt from registration; and he will not transact business in Arizona as an investment  
3 adviser or an investment adviser representative unless properly licensed in Arizona or exempt from  
4 licensure.

5 23. Kesler understands that default shall render him liable to the Commission for its  
6 costs of collection and interest at the legal rate determined by law.

7 24. Kesler agrees that he will continue to cooperate with the Securities Division and the  
8 Receiver including, but not limited to, providing truthful, complete and accurate testimony at any  
9 hearing or trial in this matter and cooperating with any governmental agency in any related  
10 investigation or any other matters arising from the activities described in the lawsuit.

11 25. Kesler agrees not to challenge the imposition or continuation of the Receivership.  
12 Reasonable inquiries into the amount and nature of fees requested by the Receiver and/or their  
13 counsel shall not be deemed a challenge to the imposition or continuation of the Receivership.

14 26. Each party shall bear its own attorneys' fees and costs.

15 27. Kesler acknowledges that this Agreement must be approved by the Commission at a  
16 noticed Open Meeting.

17 28. The Commission and Kesler agree that upon approval of this Agreement, counsel  
18 for the Commission shall, as soon as practicable, execute and cause to be filed the attached  
19 Stipulation to Entry of Judgment (Exhibit A to this Agreement) and Judgment (Exhibit B to this  
20 Agreement).

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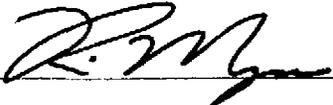
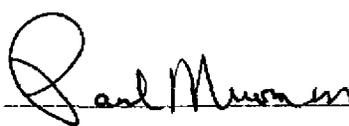
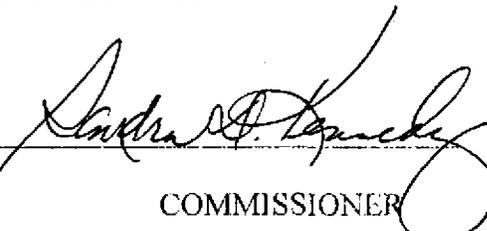




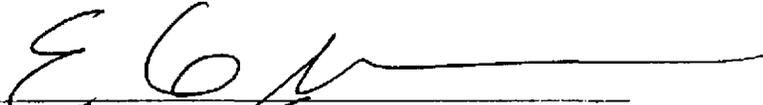
1 IT IS FURTHER ORDERED that the Securities Division is authorized to dismiss Kesler as  
2 a named Respondent In the Matter of American National Mortgage Partners, L.L.C. et al., Docket  
3 No. S-03491A-02-0000.

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

5 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

6  
7    
8 CHAIRMAN COMMISSIONER  
9  
10     
11 COMMISSIONER COMMISSIONER COMMISSIONER  
12

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
14 Executive Director of the Arizona Corporation  
15 Commission, have hereunto set my hand and caused the  
16 official seal of the Commission to be affixed at the  
17 Capitol, in the City of Phoenix, this 21<sup>st</sup> day of  
October, 2009.

18   
19 ERNEST G. JOHNSON  
20 EXECUTIVE DIRECTOR

21 \_\_\_\_\_  
**DISSENT**

22 \_\_\_\_\_  
**DISSENT**

25 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA  
26 Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
(wc)

1 SERVICE LIST FOR: MARK KESLER

2 Lawrence E. Wilk, Esq.  
3 Jaburg & Wilk, PC  
4 3200 N. Central Ave. 20<sup>th</sup> Fl  
5 Phoenix, Arizona 85012-2440

6 Michael Salcido  
7 Buckley King  
8 2020 North Central Avenue, Suite 1120  
9 Phoenix, Arizona 85004

10 Larry and Sheila Dunning  
11 2914 S. Ocean Blvd.  
12 Highland Beach, Florida 33487

13 Phil Vigarino  
14 41916 N 45<sup>th</sup> GLN  
15 Phoenix, Arizona 85086-1455

16 LaVelle & LaVelle, PLC  
17 2525 East Camelback Road, Suite 888  
18 Phoenix, Arizona 85016

19 Mark Kesler  
20 6638 West Rose Garden Lane  
21 Phoenix, Arizona 85308

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# EXHIBIT A

**ARIZONA CORPORATION COMMISSION**

Wendy Coy, #013195  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85007  
Attorney for Plaintiff  
Telephone: (602) 542-0633  
Fax: (602) 594-7418  
wcoy@azcc.gov

**STATE OF ARIZONA**

**MARICOPA COUNTY SUPERIOR COURT**

ARIZONA CORPORATION COMMISSION	)	No. CV2003 005724
	)	
Plaintiff	)	<b>STIPULATION FOR ENTRY OF</b>
	)	<b>JUDGMENT</b>
v.	)	
	)	<b>RE: MARK KESLER</b>
AMERICAN NATIONAL MORTGAGE	)	
PARTNERS, L.L.C., et al.	)	(Assigned to the Honorable Douglas Rayes)
	)	
Defendants.	)	<b>DECISION NO. 71300</b>

Plaintiff, the Arizona Corporation Commission and Defendant Mark Kesler, hereby stipulate to entry of the attached Judgment.

Dated this \_\_\_\_\_ day of October, 2009.

ARIZONA CORPORATION COMMISSION

By \_\_\_\_\_  
Wendy Coy  
Attorney for the Arizona Corporation  
Commission

Dated this \_\_\_\_\_ day of October, 2009.

By \_\_\_\_\_  
Mark Kesler

1 ORIGINAL of the foregoing e-filed  
2 this \_\_\_ day of October, 2009 with:

3 Clerk of the Maricopa County Superior Court

4 Copies of the foregoing mailed  
5 this \_\_\_ day of October, 2009 to:

6 Maricopa County Superior Court  
7 The Honorable Douglas Rayes  
8 101 West Jefferson, ECB Room 411  
9 Phoenix, Arizona 85003-2243

10 Copies of the foregoing mailed  
11 this \_\_\_ day of October, 2009 to:

12 Lawrence E. Wilk, Esq.  
13 Jaburg & Wilk, PC  
14 3200 N. Central Ave. 20<sup>th</sup> Fl  
15 Phoenix, Arizona 85012-2440  
16 *Attorney for Receiver*

17 Michael Salcido  
18 Buckley King  
19 2020 North Central Avenue, Suite 1120  
20 Phoenix, Arizona 85004  
21 *Attorney for Defendant Caspare*

22 Larry and Sheila Dunning  
23 2914 S. Ocean Blvd.  
24 Highland Beach, Florida 33487

25 Phil Vigarino  
26 41916 N 45<sup>th</sup> GLN  
Phoenix, Arizona 85086-1455

LaVelle & LaVelle, PLC  
2525 East Camelback Road, Suite 888  
Phoenix, Arizona 85016

Mark Kesler  
6638 West Rose Garden Lane  
Phoenix, Arizona 85308

/s/ Veronica Sandoval  
Legal Assistant, Securities Division

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# EXHIBIT B

1 **ARIZONA CORPORATION COMMISSION**  
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2 1300 West Washington, 3<sup>rd</sup> Floor  
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3 Attorney for Plaintiff  
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4 Fax: (602) 594-7418  
wcoy@azcc.gov  
5

6 **STATE OF ARIZONA**

7 **MARICOPA COUNTY SUPERIOR COURT**

8	ARIZONA CORPORATION COMMISSION	)	No. CV2003 005724
9	Plaintiff	)	<b>JUDGMENT</b>
10	v.	)	<b>RE: MARK KESLER</b>
11	AMERICAN NATIONAL MORTGAGE	)	(Assigned to the Honorable Douglas Rayes)
12	PARTNERS, L.L.C., et al.	)	
13	Defendants.	)	<b>DECISION NO. <u>71300</u></b>

14 Upon stipulation of Plaintiff, the Arizona Corporation Commission ("Commission") and  
15 Defendant Mark Kesler ("Kesler") and good cause appearing:

16 IT IS HEREBY ORDERED pursuant to A.R.S. § 44-2032 Kesler shall be permanently  
17 enjoined from violations of the Arizona Securities Act, A.R.S. § 44-1801 *et seq.*

18 IT IS FURTHER ORDERED that judgment shall be entered in favor of the Commission  
19 against Mark Kesler in the amount of \$135,000 for restitution.

20 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2037, civil penalty shall be  
21 imposed against Mark Kesler in the amount of \$20,000.

22 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2032, civil penalty for  
23 contempt of a prior Commission order shall be imposed against Mark Kesler in the amount of  
24 \$20,000.

25 IT IS FURTHER ORDERED that the Commission and Kesler shall bear their own  
26 attorneys' fees and costs.

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IT IS FURTHER ORDRED that interest shall accrue on all damages at the legal rate of ten percent per annum from date of entry of this Judgment until fully paid.

IT IS FURTHER ORDERED that there is no just reason for delay and this judgment shall be entered immediately.

ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Honorable Douglas Rayes  
Judge of the Superior Court