

10/8/09

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

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



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u/s

ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

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

FROM: Mark Dinell *MD*
Assistant Director of Securities

DATE: September 18, 2009

RE: John W. Pacheco, *et al.* (Docket No. S-20688A-09-0326); Order to Cease and Desist, for Restitution, and for Administrative Penalties Against Bill L. Walters and Jacquelyn Walters

CC: Ernest G. Johnson, Executive Director

Arizona Corporation Commission
DOCKETED

SEP 25 2009

DOCKETED BY *MD*

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AZ CORP COMMISSION
DOCKET CONTROL

Attached is a proposed default Order to Cease and Desist, for Restitution, and for Administrative Penalties Against Bill L. Walters and Jacquelyn Walters (the "Order"). On June 26, 2009, the Securities Division (the "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 (the "Notice") against John W. Pacheco; Angela Pacheco; Bill L. Walters; Jacquelyn Walters; Financial American Corporation; The Financial American Group, LLC; and, American Apartment Fund XI, LP (collectively "Respondents"). The Division served the Notice upon Respondents. Mr. and Mrs. Walters filed neither a request for hearing nor an answer as required by law.

From September 2005 to March 2007, Mr. Walters offered and sold investment contracts to 13 investors. Representations were made to the investors that their money would only be used as refundable earnest money deposits toward the purchase of real estate and that their money would be returned if escrows did not close. No escrows closed, but the investors received none of their money back.

The Order finds that Mr. Walters violated A.R.S. §§ 44-1841, 44-1842, and 44-1991 by offering and selling unregistered securities while being unregistered and by violating the anti-fraud provisions of the Securities Act. The Order requires Mr. Walters to cease and desist his activity, pay \$7,620,390 in restitution, and pay an administrative penalty in the amount of \$250,000.

The Division believes that the Order is appropriate to protect the public welfare.

Originator: Aaron S. Ludwig

1 request for hearing was filed by the Pachecos and Entity Respondents and, on July 24, 2009, an
2 answer to the Notice was filed by them.

3 The Division served the Notice upon BILL L. WALTERS and JACQUELYN WALTERS
4 by mailing on July 22, 2009 a copy of it to their last known dwelling or usual place of abode
5 located at 5 Ridgeline Dr., Newport Beach, CA 92660 by commercial courier, namely FedEx,
6 residential delivery direct signature requested. The signed proof of delivery states that the Notice
7 was delivered on July 23, 2009 at 1:40 p.m. BILL L. WALTERS and JACQUELYN WALTERS
8 filed neither a request for hearing nor an answer to the Notice.

9 I.

10 FINDINGS OF FACT

11 1. JOHN W. PACHECO ("PACHECO") is an individual who, at all relevant times,
12 resided in Maricopa County, Arizona. PACHECO is the CEO, chairman of the board, and sole
13 director of FINANCIAL AMERICAN CORPORATION.

14 2. BILL L. WALTERS ("WALTERS") is an individual who, at all relevant times,
15 resided in California. WALTERS is the president of FINANCIAL AMERICAN CORPORATION
16 and, at all relevant times, conducted business in Maricopa County.

17 3. FINANCIAL AMERICAN CORPORATION ("FAC") is a Nevada corporation
18 doing business in Arizona. FAC is both the managing member of THE FINANCIAL
19 AMERICAN GROUP, LLC, and the manager of AMERICAN APARTMENT MANAGEMENT
20 COMPANY, LLC ("AAMC").

21 4. THE FINANCIAL AMERICAN GROUP, LLC ("TFAG") is a Delaware limited
22 liability company doing business in Arizona.

23 5. AMERICAN APARTMENT FUND XI, LP ("AAF") is a Delaware limited
24 partnership doing business in Arizona. AAMC is the general partner of AAF.

25 6. PACHECO, WALTERS, TFAG, and AAF may be referred to collectively as
26 "Respondents."

1 7. ANGELA PACHECO was, at all relevant times, the spouse of PACHECO and
2 JACQUELYN WALTERS was, at all relevant times, the spouse of WALTERS. ANGELA
3 PACHECO and JACQUELYN WALTERS may be referred to collectively as "Respondent
4 Spouses." Respondent Spouses are joined in this action under A.R.S. § 44-2031(C) solely for
5 purposes of determining the liability of the respective marital communities.

6 8. At all relevant times, PACHECO and WALTERS acted for their own benefit and for
7 the benefit or in furtherance of their and Respondent Spouses' respective marital communities.

8 9. At all relevant times, Respondents were not registered as securities dealers or
9 salesmen.

10 10. From on or about September 2005 to March 2007 in Maricopa County, Arizona,
11 Respondents offered and sold to 13 investors \$5,600,000 of investment contracts issued by TFAG
12 and AAF with the title Deal Point Memorandum.

13 11. At all relevant times, the investment contracts referred to above were not registered
14 pursuant to Articles 6 or 7 of the Securities Act.

15 12. Touting their expertise in the real estate development process and their superior
16 knowledge of not only the Arizona real estate market but the southwest generally, including Nevada,
17 Texas, and New Mexico, PACHECO and WALTERS represented that they have many years of
18 experience identifying real estate to contract for and quickly sell or "flip" for substantial profit.

19 13. Respondents represented that TFAG and AAF would enter into contracts to purchase
20 real estate then flip the real estate before it was necessary to pay the purchase price and close escrow.

21 14. Respondents represented that the investors' money would only be used by
22 Respondents as refundable earnest money deposits toward the purchases.

23 15. The Deal Point Memoranda state that the investors will receive the greater of 100
24 percent of their investment or 5 to 10 percent of the net profits on selling the contracted-for property.

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1 16. Respondents deposited all of the investors' money into Respondents' bank accounts
2 for use by Respondents as described above and Respondents represented that they would profit
3 from flipping the real estate.

4 17. Other than paying Respondents, the investors had no duties to perform or
5 responsibilities to fulfill in order to receive their promised profit. Respondents represented that they,
6 not the investors, would locate real estate to purchase, find buyers to flip it to, and handle the purchase
7 and flip.

8 18. Respondents represented that the investors' money would be returned if escrows did
9 not close.

10 19. Respondents located land and apartment buildings to purchase, entered into contracts,
11 opened escrows, and deposited earnest money. However, no escrows closed and, even though
12 Respondents received refunds of earnest money deposits upon escrow cancellation, Respondents
13 returned no money to the investors.

14 20. PACHECO and WALTERS spent \$2,011,000 of the investors' money on personal
15 living expenses. Respondents spent the remainder of the investors' money on business expenses,
16 including payroll, interior design services, and common area maintenance charges.

17 21. On several occasions, Respondents represented to the investors that a flip was about to
18 take place when in fact it was not and the escrow was about to be or had already been cancelled.

19 22. Respondents did not disclose to the investors that WALTERS previously defaulted on
20 more than \$100 million in loans he took for real estate investment; that he filed bankruptcy and
21 discharged debts totaling \$220 million, including the real estate loans; and, that despite his
22 bankruptcy, WALTERS was and has been able to enjoy millions of dollars of assets that he put
23 beyond the reach of the Bankruptcy Court through transfers to his wife and certain trusts.

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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. WALTERS and JACQUELYN WALTERS did not request a hearing pursuant to
6 A.R.S. § 44-1972 and A.A.C. R14-4-307.

7 3. WALTERS and JACQUELYN WALTERS did not file an answer pursuant to
8 A.A.C. R14-4-307.

9 4. WALTERS offered or sold securities within or from Arizona, within the meaning of
10 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

11 5. WALTERS violated A.R.S. § 44-1841 by offering or selling securities that were
12 neither registered nor exempt from registration.

13 6. WALTERS violated A.R.S. § 44-1842 by offering or selling securities while neither
14 registered as dealers or salesmen nor exempt from registration.

15 7. WALTERS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
16 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
17 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
18 or deceit. Respondents' conduct includes, but is not limited to, the following:

19 a. Misrepresenting that the investors' money would only be used by
20 Respondents as refundable earnest money deposits toward the purchase of real estate when it was
21 in fact used by Respondents for personal living expenses and business expenses;

22 b. Misrepresenting that the investors' money would be returned if escrows did not
23 close;

24 c. Misrepresenting to the investors that a flip was about to take place when in fact
25 it was not and the escrow was about to be or had already been cancelled; and,
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1 d. Failing to disclose to the investors that WALTERS previously defaulted on
2 more than \$100 million in loans he took for real estate investment; that he filed bankruptcy and
3 discharged debts totaling \$220 million, including the real estate loans; and that, despite his
4 bankruptcy, WALTERS was and has been able to enjoy millions of dollars of assets that he put
5 beyond the reach of the Bankruptcy Court through transfers to his wife and certain trusts.

6 8. The conduct of WALTERS is grounds for a cease and desist order pursuant to
7 A.R.S. § 44-2032.

8 9. The conduct of WALTERS is grounds for an order of restitution pursuant to A.R.S.
9 § 44-2032.

10 10. The conduct of WALTERS is grounds for administrative penalties under A.R.S. §
11 44-2036.

12 11. WALTERS acted for the benefit of the marital community of WALTERS and
13 JACQUELYN WALTERS and, pursuant to A.R.S. §§ 25-214 and 25-215, this order of restitution
14 and administrative penalties is a debt of the marital community of WALTERS and JACQUELYN
15 WALTERS.

16 **III.**

17 **ORDER**

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

21 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that WALTERS and any of his agents,
22 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

23 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that WALTERS, individually,
24 and the marital community of WALTERS and JACQUELYN WALTERS, jointly and severally,
25 shall pay restitution to the Commission in the amount of \$7,620,390. Payment shall be made in
26 full on the date of this Order. Any amount outstanding shall accrue interest at the rate of 10

1 percent per annum from the date of this Order until paid in full. Payment shall be made to the
2 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

3 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
4 records of the Commission. Any restitution funds that the Commission cannot disburse because an
5 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
6 investor because the investor is deceased and the Commission cannot reasonably identify and
7 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
8 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
9 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
10 disburse shall be transferred to the general fund of the state of Arizona.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that WALTERS, individually,
12 and the marital community of WALTERS and JACQUELYN WALTERS, jointly and severally,
13 shall pay an administrative penalty in the amount of \$250,000. Payment shall be made to the
14 "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10 percent per
15 annum from the date of this Order until paid in full. The payment obligations for these
16 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall
17 become immediately due and payable only after restitution payments have been paid in full or
18 upon the default of WALTERS or JACQUELYN WALTERS with respect to the restitution
19 obligations of WALTERS and JACQUELYN WALTERS.

20 For purposes of this Order, a bankruptcy filing by WALTERS or JACQUELYN
21 WALTERS shall be an act of default. If WALTERS or JACQUELYN WALTERS does not
22 comply with this Order, any outstanding balance may be deemed in default and shall be
23 immediately due and payable.

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1 IT IS FURTHER ORDERED that, if WALTERS or JACQUELYN WALTERS fails to
2 comply with this order, the Commission may bring further legal proceedings against WALTERS or
3 JACQUELYN WALTERS, including application to the superior court for an order of contempt.

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

5 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
_____, 2009.

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ERNEST G. JOHNSON
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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(ASL)

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1 SERVICE LIST FOR: In the Matter of John W. Pacheco, et al.

2

3 Bill L. Walters
4 Jacquelyn Walters
5 5 Ridgeline Dr.
6 Newport Beach, CA 92660

7

8 John W. Pacheco
9 Angela Pacheco
10 Financial American Corporation
11 The Financial American Group, LLC
12 American Apartment Fund XI, LP
13 c/o Brian J. Schulman, Esq.
14 Greenberg Traurig, LLP
15 2375 E. Camelback Rd., Ste. 700
16 Phoenix, AZ 85016

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