

10/8/09

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

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR



0000103024

1200 WEST WASHINGTON, PHOENIX, ARIZONA 85007  
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E-MAIL: securitiesdiv@azcc.gov

6/5

ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

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

Arizona Corporation Commission  
DOCKETED

FROM: Mark Dinell   
Assistant Director of Securities

SEP 25 2009

DOCKETED BY 

DATE: September 18, 2009

RE: Proposed settlement with Frank Caspare a Defendant in *Arizona Corporation Commission v. American National Mortgage Partners, L.L.C. et al.*, CV2003-005724 (Docket No. S-03491A-02-0000)

CC: Ernest G. Johnson, Executive Director

RECEIVED  
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AZ CORP COMMISSION  
DOCKET CONTROL

On March 25, 2003, the Commission filed a civil matter against American National Mortgage Partners, L.L.C.<sup>1</sup> et al. ("ANMP") including Frank Caspare, in Maricopa County Superior Court. The Commission sought and obtained a Receiver to take control of the companies and assets of ANMP et al.

Frank Caspare was a member of various entities within ANMP and its predecessor company, Creative Financial Funding, L.L.C. (Docket No. S-003469A-01-0000). Caspare was named in the Temporary Cease and Desist Order filed on September 5, 2002 against ANMP and other entities and individuals.

Caspare has agreed to the proposed settlement with the Commission attached to this memorandum. Caspare agrees to a permanent injunction from violating the Arizona Securities Act. Caspare will pay a restitution amount of \$465,000. Caspare will pay a civil penalty of \$25,000. In addition, Caspare agrees to pay a penalty for contempt of a prior Commission Order in the amount of \$20,000.

<sup>1</sup> There were nine individual defendants and 112 entities named in *ACC v. American National Mortgage Partners LLC et al.*, Maricopa County Superior Court, CV2003-005724.

September 18, 2009

Page 2 of 2

This settlement would resolve the matter between the Commission and Defendant Frank Caspare, including the stayed administrative matter filed on September 5, 2002, Docket No. S-03491A-02-0000.

(originator W. Coy)

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

6 In the matter of: ) Docket No. S-03491A-02-0000  
7 )  
8 FRANK CASPARE and GAIL CASPARE, ) **SETTLEMENT AGREEMENT AND**  
9 husband and wife ) **ORDER RE: SAME BY: FRANK CASPARE**  
10 )  
11 Respondents. ) **DECISION NO. \_\_\_\_\_**

11 **I. SETTLEMENT AGREEMENT.**

12 1. Plaintiff, the Arizona Corporation Commission (“Commission”), and Defendant  
13 Frank Caspare (“Caspare”), parties in the case of *Arizona Corporation Commission v. American*  
14 *National Mortgage Partners L.L.C. et al.*, Maricopa County Superior Court No. CV2003-005724  
15 (the “lawsuit”), desire to resolve the portion of the lawsuit involving him and thus enter into this  
16 Settlement Agreement (“Agreement”). The Superior Court dismissed Gail Caspare, Caspare’s  
17 spouse.

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

21 3. Caspare consents to the entry of the Proposed Judgment attached as Exhibit B to  
22 this Agreement.

23 4. Caspare neither admits nor denies that he offered and sold interests through ANMP  
24 while the interests were not registered and Caspare was not registered to offer and sell securities  
25 violating A.R.S. §§ 44-1841, 1842 and 44-2032.  
26

1           5.       Caspare neither admits nor denies that he violated A.R.S. §44-1991, either directly  
2 or indirectly, when he offered and sold interest through ANMP. The Commission alleges that  
3 Caspare employed devices, schemes or artifices to defraud, made untrue statements of material fact or  
4 omitted to state material facts which were necessary in order to make the statements made not  
5 misleading in light of the circumstances under which they were made and/or engaged in any  
6 transaction, practice or course of business which operated or would operate as a fraud or deceit when  
7 Caspare offered and sold interests in ANMP.

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

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

12          8.       Caspare agrees to entry of judgment against him of \$465,000 in restitution.

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

17          10.      Pursuant to A.R.S. § 44-2037, Caspare agrees to pay a civil penalty of \$25,000.

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

21          12.      Caspare acknowledges that he has been fully advised of his right to a trial to present  
22 evidence and call witnesses and Caspare knowingly and voluntarily waives any and all rights to a  
23 trial of this matter.

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

1           14. Caspare acknowledges and agrees that this Agreement is entered into freely and  
2 voluntarily and that no promise was made or coercion used to induce such entry.

3           15. Caspare acknowledges that he has been represented by counsel in this matter, he  
4 has reviewed this Agreement with his attorney, Michael Salcido, Esq., Buckley King, and  
5 understand all terms it contains.

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

10           17. While this Order settles the lawsuit between Caspare and the Commission, Caspare  
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. Caspare 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. Caspare 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. Caspare 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. Caspare agrees that he will not exercise any control over any entity that offers or  
23 sells securities or provides investment advisory services within or from Arizona at any time in the  
24 future.

25           22. Caspare 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. Caspare 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. Caspare agrees that he will continue to cooperate with the Securities Division and  
8 the Receiver including, but not limited to, providing truthful, complete and accurate testimony at  
9 any 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. Caspare 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. Caspare acknowledges that this Agreement must be approved by the Commission at  
16 a noticed Open Meeting.

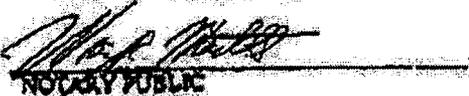
17 28. The Commission and Caspare agree that upon approval of this Agreement, their  
18 counsel shall as soon as practicable execute and cause to be filed the attached Stipulation to Entry  
19 of Judgment (Exhibit A to this Agreement) and Judgment (Exhibit B to this Agreement).

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1 29. This Agreement resolves the lawsuit brought by the Commission against Caspere.  
2 It does not resolve the portion of the lawsuit pertaining to any other named Defendant.

3  
4  
5   
Frank Caspere

6 SUBSCRIBED AND SWORN TO BEFORE me this 17th day of Sept, 2009.

7  
8   
NOTARY PUBLIC

9 My Commission Expires:

10 May 31, 2010  
11

12 **WAYNE R. MARTELL**  
13 **NOTARY PUBLIC, STATE OF NEW YORK**  
14 **NO. 6210733310**  
15 **QUALIFIED IN WESTCHESTER COUNTY**  
16 **TERM EXPIRES MAY 31, 2010**

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**II.**

**ORDER**

The Arizona Corporation Commission ("Commission") having reviewed the Settlement Agreement entered into between Frank Caspare and the Securities Division of the Commission ("Division") and finding the Settlement Agreement to be in the public interest, the Commission finds that the following Order is appropriate and in the public interest:

IT IS ORDERED that the Settlement Agreement between the Commission and Caspare is approved.

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1 IT IS FURTHER ORDERED that the Securities Division is authorized to dismiss Caspare  
2 as a named Respondent In the Matter of American National Mortgage Partners, L.L.C. et al.,  
3 Docket 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**

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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 \_\_\_\_\_ day of  
18 \_\_\_\_\_, 2009.

19 ERNEST G. JOHNSON  
20 EXECUTIVE DIRECTOR

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

23 \_\_\_\_\_  
24 **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: FRANK CASPARE

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

5 Michael Salcido  
6 Buckley King  
2020 North Central Avenue, Suite 1120  
Phoenix, Arizona 85004

7 Larry and Sheila Dunning  
8 2914 S. Ocean Blvd.  
Highland Beach, Florida 33487

9 Phil Vigarino  
10 41916 N 45<sup>th</sup> GLN  
Phoenix, Arizona 85086-1455

11 LaVelle & LaVelle, PLC  
12 2525 East Camelback Road, Suite 888  
Phoenix, Arizona 85016

13 Mark Kesler  
14 6638 West Rose Garden Lane  
Phoenix, Arizona 85308

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# EXHIBIT A

**ARIZONA CORPORATION COMMISSION**

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

**STATE OF ARIZONA**

**MARICOPA COUNTY SUPERIOR COURT**

6	ARIZONA CORPORATION COMMISSION	)	No. CV2003 005724
7		)	
8	Plaintiff	)	<b>STIPULATION FOR ENTRY OF</b>
9		)	<b>JUDGMENT</b>
10	v.	)	
11		)	<b>RE: FRANK CASPARE</b>
12	AMERICAN NATIONAL MORTGAGE	)	
13	PARTNERS, L.L.C., et al.	)	(Assigned to the Honorable Douglas Rayes)
14		)	
15	Defendants.	)	<b>DECISION NO. _____</b>

13 Plaintiff, the Arizona Corporation Commission and Defendants Frank Caspare, hereby  
14 stipulate to entry of the attached Judgment.

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

17 ARIZONA CORPORATION COMMISSION

18  
19 By \_\_\_\_\_  
Wendy Coy  
20 Attorney for the Arizona Corporation  
Commission

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

23 BUCKLEY KING

24  
25 By \_\_\_\_\_  
Michael Salcido, Esq.  
26 Attorney for Frank Caspare

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

2 Clerk of the Maricopa County Superior Court

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

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

7 Copies of the foregoing mailed  
8 this \_\_\_ day of October, 2009 to:

9 Lawrence E. Wilk, Esq.  
10 Jaburg & Wilk, PC  
3200 N. Central Ave. 20<sup>th</sup> Fl  
Phoenix, Arizona 85012-2440  
11 *Attorney for Receiver*

12 Michael Salcido  
13 Buckley King  
2020 North Central Avenue, Suite 1120  
Phoenix, Arizona 85004  
14 *Attorney for Defendant Caspare*

15 Larry and Sheila Dunning  
2914 S. Ocean Blvd.  
Highland Beach, Florida 33487

16 Phil Vigarino  
17 41916 N 45<sup>th</sup> GLN  
Phoenix, Arizona 85086-1455

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19 2525 East Camelback Road, Suite 888  
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20 Mark Kesler  
21 6638 West Rose Garden Lane  
Phoenix, Arizona 85308

22 /s/ Veronica Sandoval  
23 Legal Assistant, Securities Division

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# EXHIBIT B

1 **ARIZONA CORPORATION COMMISSION**  
 Wendy Coy, #013195  
 2 1300 West Washington, 3<sup>rd</sup> Floor  
 Phoenix, Arizona 85007  
 3 Attorney for Plaintiff  
 Telephone: (602) 542-0633  
 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: FRANK CASPARE</b>
	)	
11 AMERICAN NATIONAL MORTGAGE	)	(Assigned to the Honorable Douglas Rayes)
12 PARTNERS, L.L.C., et al.	)	
	)	
13 Defendants.	)	<b>DECISION NO.</b> _____

14  
15 Upon stipulation of Plaintiff, the Arizona Corporation Commission (“Commission”) and  
16 Defendant Frank Caspare (“Caspere”) and good cause appearing:

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

19 IT IS FURTHER ORDERED that judgment shall be entered in favor of the Commission  
20 against Frank Caspare in the amount of \$465,000 for restitution.

21 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2037, civil penalty shall be  
22 imposed against Frank Caspare in the amount of \$25,000.

23 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2032, civil penalty for  
24 contempt of a prior Commission order shall be imposed against Frank Caspare in the amount of  
25 \$20,000.  
26

1 IT IS FURTHER ORDERED that the Commission and Caspare shall bear their own  
2 attorneys' fees and costs.

3 IT IS FURTHER ORDERED that interest shall accrue on all restitution and penalty  
4 amounts at the legal rate of ten percent per annum from date of entry of this Judgment until fully  
5 paid.

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

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

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