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



Phoenix, AZ 85007
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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

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

Arizona Corporation Commission

DOCKETED

SEP 25 2009

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2009 SEP 25 A 10:47

RECEIVED

FROM: Mark Dinell *MD*
Assistant Director of Securities

DOCKETED BY *MD*

DATE: September 18, 2009

RE: Proposed settlement with Mark Kesler 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

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

Mark Kesler was a salesman on behalf of ANMP and its related entities. Kesler was a named Respondent in the Temporary Cease and Desist Order filed on September 5, 2002 against ANMP and other entities and individuals. Kesler is subject to a prior Commission Order, Decision No. 67219 related to his activities as a salesperson for HCH Enterprise, LLC, Docket No. S-03540A-04-0000.

Kesler has agreed to the proposed settlement with the Commission attached to this memorandum. Kesler agrees to a permanent injunction from violating the Arizona Securities Act. Kesler will pay a restitution amount of \$135,000. Kesler will pay a civil penalty of \$20,000. In addition, Kesler agrees to pay a penalty for contempt of a prior Commission Order in the amount of \$20,000.

¹ 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 Mark Kesler, 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

8 In the matter of:

9 MARK KESLER

10 Respondent.

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

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

) **DECISION NO.** _____

11 **I. SETTLEMENT AGREEMENT.**

12 1. Plaintiff, the Arizona Corporation Commission (“Commission”), and Defendant
13 Mark Kesler (“Kesler”), 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 them and thus enter into this
16 Settlement Agreement (“Agreement”).

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

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

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

25 5. Kesler neither admits nor denies that he violated A.R.S. §44-1991, either directly or
26 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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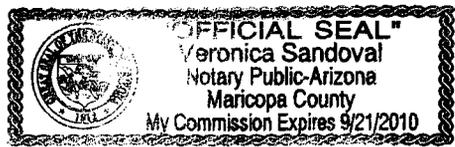
29. This Agreement resolves the lawsuit brought by the Commission against Kesler. It does not resolve the portion of the lawsuit pertaining to any other named Defendant.


Mark Kesler

SUBSCRIBED AND SWORN TO BEFORE me this 18th day of September, 2009.


NOTARY PUBLIC

My Commission Expires:
9/21/2010



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II.

ORDER

The Arizona Corporation Commission (“Commission”) having reviewed the Settlement Agreement entered into between Mark Kesler 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 Kesler is approved.

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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**

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7

8 CHAIRMAN COMMISSIONER
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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 _____
DISSENT

22 _____
DISSENT

23
24
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.
(wc)

1 SERVICE LIST FOR: MARK KESLER

2 Lawrence E. Wilk, Esq.
3 Jaburg & Wilk, PC
4 3200 N. Central Ave. 20th 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 45th 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, 3rd 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	)	STIPULATION FOR ENTRY OF
	)	JUDGMENT
v.)	
	)	RE: MARK KESLER
AMERICAN NATIONAL MORTGAGE)	
PARTNERS, L.L.C., et al.	)	(Assigned to the Honorable Douglas Rayes)
)	
Defendants.)	
	)	DECISION NO. _____

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. 20th 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 45th 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

Decision No. _____

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

6 **STATE OF ARIZONA**

7 **MARICOPA COUNTY SUPERIOR COURT**

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

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.

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

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

5 ORDERED this ____ day of _____, 2009.

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Honorable Douglas Rayes
Judge of the Superior Court