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

ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR



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ARIZONA CORPORATION COMMISSION

GROUP COMMISSION
 LOCKET CONTROL

ORIGINAL

MEMORANDUM

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

FROM: Matthew J. Neubert *mjn*
 Director of Securities

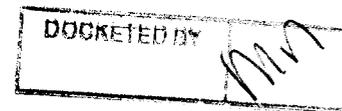
DATE: February 2, 2010

RE: *In re Rex G. Wheeler, Jr.,*
 Docket No. S-20705A-09-0482

CC: Ernest G. Johnson, Executive Director

Arizona Corporation Commission
DOCKETED

FEB - 4 2010



Attached for your consideration is a proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order") and Consent to Same By: Respondent Rex G. Wheeler, Jr. ("Wheeler"). The Order finds that from April 2006 to September 2007, Wheeler sold \$3,332,558 worth of unregistered securities in the form of investment contracts and notes to 17 Arizona investors. Wheeler promised to use investor money to fund real estate loans made to a company that was in the business of acquiring high-end residences. Wheeler represented to investors that the investments would be secured by real estate, and would pay interest at the rate of 24% per year. Wheeler made unsecured loans to a third-person who did not repay Wheeler. Wheeler voluntarily filed a Chapter 7 bankruptcy in January 2008, and the bankruptcy trustee has obtained an unpaid adverse judgment against the third-person totaling \$11,517,456. Before the bankruptcy, Wheeler repaid investors \$840,347.

The Order finds that Wheeler violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by selling unregistered securities while not being registered as securities salesman or dealers, or exempt from registration. The Order also finds that Wheeler violated the anti-fraud provision of the Act, A.R.S. § 44-1991.

The Order requires Wheeler to permanently cease and desist from violating the Act. The Order also requires Wheeler to pay a \$150,000 administrative penalty and restitution totaling \$3,174,871, which amount includes principal owed and prejudgment interest thereon at the rate of 10% from the date of that the investments were purchased.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey

1 3. At all times relevant, WHEELER represented to investors that he was in the
2 business of: (a) real estate consulting; (b) buying and selling of leases of real property with options
3 to purchase; and (c) real estate finance.

4 4. At all times relevant, WHEELER represented to investors that he would pool their
5 investment money together to finance a "Hard Money Fund" ("HMF") that he had created (the
6 "HMF Investment(s)"). WHEELER further represented that he would use the HMF Investment
7 money to fund real estate loans made to a company (the "Company") so that it could develop
8 and/or acquire "high-end" residences throughout the United States.

9 5. WHEELER represented to investors that the HMF Investments would pay a return
10 of eighteen to twenty-four percent per year, with interest paid out on a monthly basis and the
11 eventual return of their principal at the conclusion of the investments.

12 6. The HMF Investments had an initial term of nine months. Thereafter, investors
13 could continue their investments, or terminate them by providing WHEELER with three months
14 written notice.

15 7. The HMF Investments were documented, in part, by unsecured promissory notes
16 signed by WHEELER.

17 8. WHEELER managed all aspects of the HMF Investments and, without limitation: (a)
18 formed, funded and managed the HMF; and (b) negotiated the terms and conditions of the loans
19 funded with investor money. At all times relevant, WHEELER emphasized that the success of the
20 HMF Investments would depend on his real estate management knowledge and skill.

21 9. WHEELER represented to investors that the HMF Investments would be secured by
22 first-position deeds of trust recorded in their favor on the real estate or improvements leased,
23 developed and/or purchased by the Company with investor money (the "Collateral").

24 10. Unbeknownst to investors, their HMF Investments were not secure because: (a)
25 WHEELER did not obtain any Collateral for the loans; and (b) Wheeler did not assign investors a
26 security interest in any real estate or property associated with the Company or HMF Investments.

1 11. WHEELER also represented to investors that the HMF Investments were safe due
2 to the superior industry reputation of the Company and its “competent and trustworthy
3 management.”

4 12. WHEELER failed to inform investors that their HMF Investments were not safe
5 because: (a) any Collateral underlying the Company loans would be subject to unpredictable real
6 estate market fluctuations and/or declines; (b) the ability of WHEELER’s borrower to repay loans
7 funded with investor money could be negatively impacted by unpredictable, expensive and time
8 consuming civil and bankruptcy litigation; and (c) investors could lose all or a vast portion of their
9 investments, in part, because WHEELER did not assign investors a security interest in any
10 Collateral associated with the Company or HMF Investments.

11 13. WHEELER caused the Arizona investors to wire their investment money into bank
12 accounts owned and controlled by WHEELER. WHEELER did loan HMF Investment money to
13 the Company’s owner Weston Wade Sleater. Pursuant to these loans, Mr. Sleater agreed to pay
14 WHEELER interest at the rate of forty-eight percent per annum (the “Sleater Loans”). However,
15 Sleater did not provide Wheeler with first-position deeds of trust on any real estate to secure the
16 Sleater Loans as Mr. Sleater had originally promised Wheeler.

17 14. Unbeknownst to his investors, and prior to making the Sleater Loans, WHEELER
18 extensively commingled investor money within the accounts of his other real estate companies (the
19 “Commingled Money”) including: (a) Bedrock Marketing, L.L.C., a Utah limited liability
20 company; (b) The Ockham Group, L.L.C., a Utah limited liability company; (c) Enlightened
21 Management, L.L.C., a Utah limited liability company; and (d) Property Certain, L.L.C., a Utah
22 limited liability company (the “WHEELER Companies”). WHEELER further failed to disclose to
23 investors that he used the Commingled Money, in part, to support his separate real estate
24 businesses and/or to pay for personal expenditures.

25 15. WHEELER and the WHEELER Companies are debtors in voluntary, consolidated
26 Chapter 7 bankruptcies filed by WHEELER on January 18, 2008, in which the Arizona investors

1 are unsecured creditors, and the HMF Investments and the Sleater Loans are being litigated (the
2 “Bankruptcy”). (*See, In re Wheeler, et al.*, No. 08-20300, U.S. Bankruptcy Court, District of Utah,
3 Central Division (Hon. William T. Thurman)). WHEELER’s personal, amended Bankruptcy
4 schedules claim assets of approximately \$6,151,000 and liabilities of \$18,000,000. WHEELER
5 was granted a discharge in the Bankruptcy on or about June 16, 2008.

6 16. Mr. Sleater failed to repay the Sleater Loans made to him by WHEELER and
7 funded, in part, with investor money. On or about April 8, 2009, the Bankruptcy Trustee obtained
8 an adverse judgment against Mr. Sleater for non-payment of the Sleater Loans totaling
9 \$11,517,456 (Adversary No. 08-20308). To date, no money has been collected on the adverse
10 judgment against Mr. Sleater resulting from his non-payment of the Sleater Loans.

11 17. WHEELER sold nineteen HMF Investments totaling \$3,332,558. Based on
12 repayments, WHEELER owes the Arizona investors \$2,492,211.

13 II.

14 CONCLUSIONS OF LAW

15 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
16 Arizona Constitution and the Securities Act.

17 2. WHEELER offered or sold securities within or from Arizona, within the meaning
18 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

19 3. WHEELER violated A.R.S. § 44-1841 by offering or selling securities that were
20 neither registered nor exempt from registration.

21 4. WHEELER violated A.R.S. § 44-1842 by offering or selling securities while
22 neither registered as a dealer or salesman nor exempt from registration.

23 5. WHEELER violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
24 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
25 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
26 or deceit. WHEELER’s conduct included:

1 A. Misrepresenting to investors that he would use their HMF Investment money to
2 make secured loans to the Company, when WHEELER commingled investor
3 money within the accounts of the WHEELER Companies and, in some instances,
4 used such Commingled Money, in part, to support his other real estate businesses
5 and/or for personal expenditures;

6 B. Misrepresenting to investors that their HMF Investments would be secured by first-
7 position deeds of trust recorded in their favor on the Collateral acquired by the
8 Company with investor money, when the HMF Investments were not secure
9 because: (1) WHEELER did not obtain any Collateral for such loans; and (2)
10 WHEELER did not assign investors a security interest in any Collateral associated
11 with the Company or HMF Investments; and

12 C. Representing to investors that the HMF Investments were safe, while further
13 failing to disclose to them that the investments were not safe because: (a) any
14 Collateral that would secure the Company loans would be subject to unpredictable
15 real estate market fluctuations and/or declines; (b) the ability of WHEELER's
16 borrower to repay loans funded with investor money could be negatively impacted
17 by unpredictable, expensive and time consuming civil and bankruptcy litigation;
18 and (c) investors could lose all or a vast portion of their investments, in part,
19 because WHEELER did not assign investors a security interest in any Collateral
20 associated with the Company or HMF Investments.

21 6. WHEELER's conduct is grounds for a cease and desist order pursuant to A.R.S.
22 § 44-2032.

23 7. WHEELER's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
24 2032.

25 8. WHEELER's conduct is grounds for administrative penalties under A.R.S. § 44-
26 2036.

III.

ORDER

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3 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and WHEELER's
4 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
5 that the following relief is appropriate, in the public interest, and necessary for the protection of
6 investors:

7 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that WHEELER, and any of
8 WHEELER's agents, employees, successors and assigns, permanently cease and desist from
9 violating the Securities Act.

10 IT IS FURTHER ORDERED that WHEELER complies with the attached Consent to Entry
11 of Order.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that WHEELER shall pay
13 restitution to the Commission in the principal amount of \$2,492,211. Any principal amount
14 outstanding shall accrue interest at the rate of 10 percent per annum from the date of purchase until
15 paid in full. Interest in the amount of \$682,660 has accrued from the date of purchase to February
16 18, 2009. Payment shall be made in full on the date of this Order. Payment shall be made to the
17 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

18 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
19 records of the Commission. Any restitution funds that the Commission cannot disburse because an
20 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
21 investor because the investor is deceased and the Commission cannot reasonably identify and
22 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
23 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
24 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
25 disburse shall be transferred to the general fund of the state of Arizona.

26

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that WHEELER shall pay an
2 administrative penalty in the amount of \$150,000. Payment shall be made to the “State of
3 Arizona.” Any amount outstanding shall accrue interest at the rate of 10 percent per annum from
4 the date of this Order until paid in full. The payment obligations for these administrative penalties
5 shall be subordinate to any restitution obligations ordered herein and shall become immediately
6 due and payable only after restitution payments have been paid in full or upon Respondent’s
7 default with respect to Respondent’s restitution obligations.

8 IT IS FURTHER ORDERED that WHEELER shall not apply to the Commission for
9 registration as a securities salesman or dealer, or licensure as an investment adviser or investment
10 adviser representative at any time in the future.

11 IT IS FURTHER ORDERED that WHEELER shall not exercise any control over any
12 entity that offers or sells securities or provides investment advisory services within or from
13 Arizona at any time in the future.

14 If WHEELER does not comply with this Order, any outstanding balance may be deemed in
15 default and shall be immediately due and payable.

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IT IS FURTHER ORDERED, that if WHEELER fails to comply with this order, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, 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 _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

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.

(MD)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent REX G. WHEELER, JR. (“WHEELER”), an individual, admits the
3 jurisdiction of the Commission over the subject matter of this proceeding. WHEELER
4 acknowledges that WHEELER has been fully advised of his right to a hearing to present evidence
5 and call witnesses and WHEELER knowingly and voluntarily waives any and all rights to a
6 hearing before the Commission and all other rights otherwise available under Article 11 of the
7 Securities Act and Title 14 of the Arizona Administrative Code. WHEELER acknowledges that
8 this Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties (“Order”)
9 constitutes a valid final order of the Commission.

10 2. WHEELER knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. WHEELER acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. WHEELER understands and acknowledges that he has a right to seek counsel
16 regarding this Order, and that WHEELER has had the opportunity to seek counsel prior to signing
17 this Order. WHEELER acknowledges and agrees that, despite the foregoing, WHEELER freely
18 and voluntarily waives any and all right to consult or obtain counsel prior to signing this Order.

19 5. WHEELER admits only for purposes of this proceeding and any other
20 administrative proceeding before the Commission or any other agency of the state of Arizona the
21 Findings of Fact and Conclusions of Law contained in this Order. WHEELER agrees that he shall
22 not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in
23 any present or future administrative proceeding before the Commission or any other Arizona state
24 agency concerning the denial or issuance of any license or registration required by any Arizona
25 state agency to engage in the practice of any business or profession.

26

1 6. By consenting to the entry of this Order, WHEELER agrees not to take any action
2 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
3 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
4 factual basis. WHEELER will undertake steps necessary to assure that all of Respondent's agents
5 and employees understand and comply with this agreement.

6 7. While this Order settles this administrative matter between WHEELER and the
7 Commission, WHEELER understands that this Order does not preclude the Commission from
8 instituting other administrative or civil proceedings based on violations that are not addressed by
9 this Order.

10 8. WHEELER understands that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. WHEELER understands that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. WHEELER agrees that he will not apply to the state of Arizona for registration as a
17 securities dealer or salesman or for licensure as an investment adviser or investment adviser
18 representative at any time in the future.

19 11. WHEELER agrees that he will not exercise any control over any entity that offers
20 or sells securities or provides investment advisory services within or from Arizona at any time in
21 the future.

22 12. WHEELER agrees that he will not sell any securities in or from Arizona without
23 being properly registered in Arizona as a dealer or salesman, or exempt from such registration;
24 WHEELER will not sell any securities in or from Arizona unless the securities are registered in
25 Arizona or exempt from registration; and WHEELER will not transact business in Arizona as an
26

1 investment adviser or an investment adviser representative unless properly licensed in Arizona or
2 exempt from licensure.

3 13. WHEELER agrees that he will continue to cooperate with the Securities Division
4 including, but not limited to, providing complete and accurate testimony at any hearing in this
5 matter and cooperating with the state of Arizona in any related investigation or any other matters
6 arising from the activities described in this Order.

7 14. WHEELER consents to the entry of this Order and agrees to be fully bound by its
8 terms and conditions.

9 15. WHEELER acknowledges and understands that if he fails to comply with the
10 provisions of the order and this consent, the Commission may bring further legal proceedings
11 against RESPONDENT, including application to the superior court for an order of contempt.

12 16. WHEELER understands that default shall render him liable to the Commission for
13 its costs of collection and interest at the maximum legal rate.

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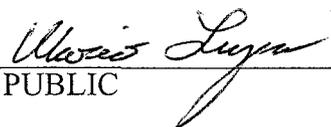
17. WHEELER agrees and understands that if he fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. WHEELER agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by Commission.



Respondent Rex. G. Wheeler, Jr.

STATE OF UTAH)
County of Galt Lake) ss

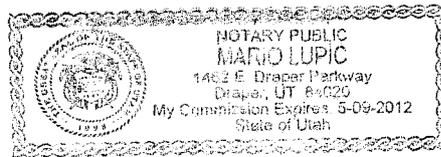
SUBSCRIBED AND SWORN TO BEFORE me this 19 day of Jan, 2010.



NOTARY PUBLIC

My commission expires:

5-9-2012



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SERVICE LIST FOR: *In re Rex G. Wheeler, Jr.*, Docket No. S-20705A-09-0482:

Rex G. Wheeler, Jr.
3504 South Morningwood Ct.
Salt Lake City, UT 84106