

OPEN MEETING ITEM

2/18/10



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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

ARIZONA CORPORATION COMMISSION
SECRET CONTROL

ORIGINAL

MEMORANDUM

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

FROM: Matthew J. Neubert 
Director of Securities

DATE: February 2, 2010

RE: *In re Green Panel Corporation, et al.*,
Docket No. S-20676A-09-0248

CC: Ernest G. Johnson, Executive Director

Arizona Corporation Commission
DOCKETED

FEB - 4 2010

DOCKETED BY 

Attached for your consideration is a proposed default Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order"). The Order finds that from on or about April 7, 2001, to November 10, 2009, respondents Green Panel Corporation, a Wyoming corporation ("GPC"), Joseph Samuel Burton and his wife Bonnie Eileen Burton (collectively the "Burtons") and Panelized Building Systems of Prescott, L.L.C., a dissolved Wyoming limited liability company ("PBS") (collectively the "Respondents") offered and sold unregistered securities within and from Arizona in the form of investment contracts, notes and limited liability company membership interests to 24 investors residing in Arizona and 3 other states totaling \$1,425,855.

Respondents promised to use investor money to manufacture structural insulated wall and roof panels ("SIP") for sale to residential and commercial contractors, and to construct SIP-based homes. The cost of the investments ranged from \$5,000 to \$150,000. They were often documented by unsecured notes that promised interest at the rate of 10 to 348% per year. Respondents also sold limited liability company membership interests in PBS and/or an interest in their net business income. Investors received no returns, and Respondents provided information to the Division demonstrating that, to date, their business operations have produced no profits, but rather only losses.

The Division filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TC&D") against Respondents on May 20, 2009. The Division personally served the TC&D on Respondents on November 10, 2009 at their last known Arizona residence, and they have failed to file a request for hearing or an answer within the required time limits.

The Order finds that Respondents 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 Respondents committed 3 violations of the anti-fraud provision of the Act, A.R.S. § 44-1991.

The Order requires Respondents to permanently cease and desist from violating the Act. The Order further requires Respondents to pay a \$100,000 administrative penalty, and restitution totaling \$1,425,855 to be paid jointly and severally by Respondents as follows: (a) \$1,425,855 by the Burtons and their marital community; (b) \$839,800 by GPC; and (c) \$264,000 by PBS.

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

Originator: Mike Dailey

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	)	DOCKET NO. S-20676A-09-0248
9 GREEN PANEL CORPORATION, a)	
10 Wyoming corporation,	)	DECISION NO. _____
11 JOSEPH SAMUEL BURTON, a married)	
12 man,	)	ORDER TO CEASE AND DESIST, ORDER
13 BONNIE EILEEN BURTON, a married	)	FOR RESTITUTION AND ORDER FOR
14 woman,	)	ADMINISTRATIVE PENALTIES AGAINST
15 PANELIZED BUILDING SYSTEMS OF	)	RESPONDENTS:
16 PRESCOTT, L.L.C. (a/k/a "PANELIZED)	
BUILDING SYSTEMS"), a dissolved	)	GREEN PANEL CORPORATION
Wyoming limited liability company,	)	JOSEPH SAMUEL BURTON
	)	BONNIE EILEEN BURTON
Respondents.	)	PANELIZED BUILDING SYSTEMS OF
	)	PRESCOTT, L.L.C. (a/k/a "PANELIZED
	)	BUILDING SYSTEMS")

17 **I.**

18 **FINDINGS OF FACT**

19 1. On May 20, 2009, the Securities Division ("Division") of the Arizona Corporation
20 Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of
21 Opportunity for Hearing ("TC&D") against respondents GREEN PANEL CORPORATION
22 ("GPC"), JOSEPH SAMUEL BURTON ("JB"), BONNIE EILEEN BURTON ("BB") and
23 PANELIZED BUILDING SYSTEMS OF PRESCOTT, L.L.C. (a/k/a "PANELIZED BUILDING
24 SYSTEMS") ("PBS").
25
26

1 2. JB and BB may be referred to hereafter as the "BURTONS." GPC and PBS may be
2 referred to hereafter as the "BURTON COMPANIES." The BURTONS and the BURTON
3 COMPANIES may be referred to hereafter as "RESPONDENTS."

4 3. On November 10, 2009, the Division personally served RESPONDENTS with
5 copies of the TC&D, at the BURTONS' last known residence at 4781 Edgemont, Prescott Valley,
6 Arizona 86312.

7 4. RESPONDENTS have not filed a request for hearing or an answer to the TC&D.

8 5. GPC is a Wyoming corporation that conducted business within or from Prescott,
9 Arizona from on or about January 12, 2007, to at least November 10, 2009.

10 6. From on or about October 11, 2006, to at least December 9, 2007, PBS was a manager
11 managed Wyoming limited liability company that conducted business within or from Prescott,
12 Arizona. PBS's corporate status was revoked by the Wyoming Secretary of State's Office on
13 December 9, 2007 for failure to appoint a statutory agent, and its status has not been reinstated as
14 of the date of this Order.

15 7. At all times relevant, JB has resided in Prescott, Arizona, and has been married to
16 BB. From on or about April 7, 2001, to at least November 10, 2009, JB conducted business in his
17 individual capacity, and on behalf of: (a) GPC as its co-owner, secretary, chief operating officer
18 and/or board member; and (b) PBS as its co-owner and/or member.

19 8. At all times relevant, BB has resided in Prescott, Arizona. From on or about April 7,
20 2001, to at least November 10, 2009, BB conducted business in her individual capacity, and on
21 behalf of: (a) GPC as its co-owner, president, chief executive officer and/or chairman of the board;
22 and (b) PBS as its co-owner and managing member.

23 9. At all times relevant, the BURTONS have acted for their own benefit and for the
24 benefit and in furtherance of their marital community.

25 10. At all relevant times, RESPONDENTS have not been registered as securities
26 salesman or dealers by the Commission.

1 11. From on or about April 7, 2001, to at least November 10, 2009, RESPONDENTS
2 offered and sold unregistered securities within and from Arizona in the form of investment
3 contracts, notes and limited liability company membership interests in PBS.

4 12. RESPONDENTS offered and sold at least 33 unregistered securities totaling
5 \$1,425,855 to 24 investors residing in Arizona and 3 other states. Of this amount: (a) \$1,425,855
6 was sold by the BURTONS; (b) \$839,800 was sold by GPC; and (c) \$264,000 was sold by PBS.

7 13. At all times relevant, RESPONDENTS represented to offerees and investors that
8 they were engaged in the business of manufacturing structural insulated wall and roof panels
9 (“SIP”) for use in residential, commercial and industrial construction.

10 14. At all times relevant, RESPONDENTS promised offerees and investors that they
11 would pool investor money together to: (a) promote and expand the BURTON COMPANIES and
12 their SIP manufacturing and sales capabilities; and (b) build and/or assist in the building of
13 thousands of SIP-based homes and commercial structures costing tens of millions of dollars.

14 15. RESPONDENTS sold approximately 25 unsecured note securities ranging in price
15 from approximately \$5,000 to \$150,000.

16 16. The terms and conditions of the notes varied, and promised interest ranging from 10
17 percent to 348 percent per year, and the eventual return of the principal investment in as little as 90
18 days to 7 months. One note offered and sold by the BURTONS and PBS states that if they are
19 unable to pay the promised interest, the investor would alternatively receive a 25 percent limited
20 liability company membership interest in PBS.

21 17. Investment contracts offered and sold by RESPONDENTS promised investors: (a)
22 interest on principal, similar to the notes; (b) a limited liability company membership interest in
23 PBS ranging from 5 percent to 40 percent; and/or (c) a percentage of net income produced by
24 RESPONDENTS’ business operations.

25 18. At all times relevant, RESPONDENTS managed all aspects of the securities and,
26 without limitation: (a) operated the BURTON COMPANIES and supervised their agents and

1 employees; (b) designed, built and manufactured the tools, machinery and plant facilities necessary to
2 construct SIPs; and (c) manufactured and marketed SIPs and their SIP-based construction projects.

3 19. At all times relevant, RESPONDENTS deposited investor money into Arizona banks
4 accounts owned and controlled by RESPONDENTS.

5 20. At all times relevant, RESPONDENTS used a variety of media to offer the
6 securities. In December 2007, the BURTONS arranged for a power point presentation to be
7 presented to approximately 25 potential investors in Atlanta, Georgia during which they sought
8 hundreds of thousands of dollars in note investment money for GPC. From at least June 2008 to
9 2009, the BURTONS and GPC publicly solicited investors on the internet.

10 21. At all times relevant, RESPONDENTS represented to offerees and investors that:

11 A. RESPONDENTS have executed contracts to build thousands of SIP-based
12 homes, commercial and/or industrial buildings totaling hundreds of millions
13 of dollars in the United States and abroad with the governments of, for
14 instance, South Africa and the Dominican Republic; and

15 B. that investors would receive their investment returns from proceeds
16 resulting from their SIP-based construction activities.

17 22. At all times relevant, RESPONDENTS failed to inform offerees and investors that
18 their ability to obtain their promised investment returns and the ability of RESPONDENTS'
19 customers to pay RESPONDENTS for their SIP products and/or services could be negatively
20 impacted by: (a) real estate market fluctuations and declines; and (b) expensive and time
21 consuming civil litigation. RESPONDENTS further failed to disclose any risks associated with
22 the securities including, but not limited to, the fact that investors could lose all or a vast portion of
23 their principal investments.

24 23. At all times relevant, RESPONDENTS failed to disclose to offerees and investors
25 that they have been defendants in approximately 19 Arizona and Ohio civil lawsuits concerning
26 their SIP-based construction and business operations and the securities at issue (the "Lawsuits").

1 RESPONDENTS further failed to disclose to offerees and investors that the Lawsuits resulted in
2 unsatisfied breach of contract and fraud judgments against the BURTONS and/or the BURTON
3 COMPANIES totaling approximately \$1,600,000.

4 24. At all times relevant, RESPONDENTS failed to inform offerees and investors that
5 RESPONDENTS were not, and are not licensed by the Arizona Registrar of Contractors (“ROC”)
6 to construct residential homes or commercial buildings.

7 25. In addition to their internet advertisements, the BURTONS and GPC offered an
8 Arizona resident an unsecured investment contract in 2009 costing approximately \$2,000,000.

9 26. To date, RESPONDENTS’ investors have received no repayments on their
10 investments.

11 27. On March 27, 2009, RESPONDENTS provided documentation to the Division
12 demonstrating that, to date, their SIP business operations have produced no profits, but rather only
13 losses.

14 **II.**

15 **CONCLUSIONS OF LAW**

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

18 2. RESPONDENTS were served with the TC&D pursuant to R14-4-303(D) and
19 A.R.S. § 44-1972.

20 3. RESPONDENTS failed to request a hearing, or file an answer within the required
21 time limits pursuant to A.R.S. § 44-1972, R14-4-305 R14-4-307.

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

24 5. From April 7, 2001, to at least November 10, 2009, the BURTONS violated A.R.S.
25 § 44-1841 by offering or selling securities in the form of investment contracts, notes and limited
26 liability company membership interests that were neither registered nor exempt from registration.

1 6. From January 12, 2007, to at least November 10, 2009, GPC violated A.R.S. § 44-
2 1841 by offering or selling securities in the form of investment contracts and notes that were
3 neither registered nor exempt from registration.

4 7. From October 11, 2006, to at least December 9, 2007, PBS violated A.R.S. § 44-
5 1841 by offering or selling securities in the form of investment contracts, notes and limited
6 liability company membership interests that were neither registered nor exempt from registration.

7 8. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
8 neither registered as dealers or salesmen nor exempt from registration.

9 9. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
10 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
11 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
12 or deceit. RESPONDENTS' conduct included:

13 A. Representing to offerees and investors that they would earn significant returns by
14 purchasing the securities, while failing at all times relevant to further disclose that
15 RESPONDENTS were defendants in approximately 19 Arizona and Ohio Lawsuits
16 regarding their SIP-based construction and business operations and the securities
17 resulting in unsatisfied breach of contract and fraud judgments against
18 RESPONDENTS totaling approximately \$1,600,000.

19 B. Representing to offerees and investors that they would receive their investment
20 returns from proceeds resulting from their SIP-based construction operations, while
21 failing at all times relevant to further disclose: (1) any risks associated with the
22 securities including, but not limited to, the fact that investors could lose all or a vast
23 portion of their principal investments; and/or (2) that investors' ability to obtain
24 their promised investment returns, and the ability of RESPONDENTS' customers
25 to pay RESPONDENTS for their SIP products and/or services could be negatively
26 impacted by unpredictable: (a) real estate market fluctuations and declines; and (b)

1 expensive and time consuming civil litigation in both the United States and/or
2 abroad.

3 C. Representing to offerees and investors that they would be repaid their investment
4 returns from proceeds resulting from their SIP-based construction operations, while
5 failing to disclose at all times relevant that: (1) they were not licensed as
6 contractors by the ROC; (2) given the nature of their purported SIP-based
7 construction projects, they were acting as "contractors" as defined by Arizona law,
8 and were required to be licensed under A.R.S. § 32-1121; (3) it is unlawful to
9 conduct business as a contractor without being licensed under A.R.S. § 32-1151;
10 and (4) RESPONDENTS' failure to be licensed as contractors by the ROC
11 negatively impacts and/or impacted their ability to be compensated for their SIP-
12 based construction work and, therefore, their ability to repay investors as promised.

13 10. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to
14 A.R.S. § 44-2032.

15 11. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.
16 § 44-2032.

17 12. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. §
18 44-2036.

19 13. JB and BB acted for the benefit and in furtherance of their marital community and,
20 pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a
21 debt of the JB and BB's marital community

22 **III.**

23 **ORDER**

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

1 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and any of their
2 agents, employees, successors and assigns, permanently cease and desist from violating the
3 Securities Act.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and JB
5 and BB's marital community shall, jointly and severally, pay restitution to the Commission in the
6 amount of \$1,425,855: (a) JB, BB, and their marital community shall be liable for \$1,425,855; (b)
7 GPC shall be liable for \$839,800; and (c) PBS shall be liable for \$264,000. Payment shall be
8 made in full on the date of this Order. Any amount outstanding shall accrue interest at the rate of
9 10 percent per annum from the date of this Order until paid in full. Payment shall be made to the
10 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. The
11 Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the
12 Commission. Any restitution funds that the Commission cannot disburse because an investor
13 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor
14 because the investor is deceased and the Commission cannot reasonably identify and locate the
15 deceased investor's spouse or natural children surviving at the time of the distribution, shall be
16 disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission.
17 Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be
18 transferred to the general fund of the state of Arizona.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall
20 pay an administrative penalty in the amount of \$100,000. Payment shall be made to the "State of
21 Arizona." Any amount outstanding shall accrue interest at the rate of 10 percent per annum from
22 the date of this Order until paid in full. The payment obligations for these administrative penalties
23 shall be subordinate to any restitution obligations ordered herein and shall become immediately
24 due and payable only after restitution payments have been paid in full or upon the default of
25 RESPONDENTS with respect to the restitution obligations of RESPONDENTS.
26

1 For purposes of this Order, a bankruptcy filing by RESPONDENTS shall be an act of
2 default. If RESPONDENTS do not comply with this Order, any outstanding balance may be
3 deemed in default and shall be immediately due and payable.

4 IT IS FURTHER ORDERED that default shall render RESPONDENTS liable to the
5 Commission for its costs of collection and interest at the maximum legal rate.

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IT IS FURTHER ORDERED that, if any of the RESPONDENTS fail to comply with this order, the Commission may bring further legal proceedings against the RESPONDENTS, 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 February, 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.

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SERVICE LIST FOR: In re Green Panel Corporation, et al.,
Docket No. S-20676A-09-0248

Joseph and Bonnie Burton
Green Panel Corporation
Panelized Building Systems
4781 Edgemont
Prescott Valley, Arizona 86312