

ORIGINAL

**OPEN MEETING AGENDA ITEM
EXCEPTION**



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

12

COMMISSIONERS

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

2010 FEB -8 P 1:47

AZ CORP COMMISSION
DOCKET CONTROL

_____)
 In the matter of:)
)
STEVE JOHN ROGAN, a married man)
)
)
CAROL ANN RICHEY, a married woman)
)
)
DEM BONZ BARBECUE RESTAURANTS,)
L.L.C., an Arizona limited liability company,)
)
PIAZZ, L.L.C., an Arizona limited liability)
Company,)
)
)
Respondents.)
)
)
 _____)

DOCKET no. S-20654A-09-0068
 EXCEPTION TO THE OPINION
 AND ORDER OF JANUARY 28, 2010

Arizona Corporation Commission
DOCKETED
 FEB - 8 2010

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| DOCKETED BY | <i>MS</i> |
|-------------|-----------|

RESPONDENTS EXEPTION TO THE OPINION AND ORDER OF JANUARY 28, 2010

COMES NOW the Respondents, Steve John Rogan and Carol Ann Richey, Pro Se, Pursuant to A.A.C. R14-3-110, hereby sets forth these Exceptions of the Order and Opinion to the allegations by the Arizona Corporation Commission.

1. The foregoing are exceptions cited for each paragraph in each heading addressed.
2. There are numerous misrepresentations and misstatements of facts.

FINDINGS OF FACT

1. Respondents agree with paragraphs 1,2,3,4,5,6,7,8,9,10,11,12,13, and 14.
2. Respondents disagree with paragraph 15 and 16. This was an assumption made by investigator Rice. The website was under construction at the time adding additional components as warranted.

3. Respondents disagree with paragraph 17. Investigator Rice had an opportunity to review the Business Plan (Exhibit S-3) and could have easily determined that \$150,000 had been spent on "shell" tenant improvements had he been able to view the inside and all the work completed. All this was spelled out in the Business Plan.
4. Respondents agree with paragraphs 18, 19, and 20.
5. Respondents disagree with paragraph 21. Investigator Rice falsely purported himself to be an "investor." That was his terminology. We had clearly stated in the Business Plan (Exhibit S-3) that we needed a loan.
6. Respondents agree with paragraph 22.
7. Respondents disagree with paragraph 23. No representation was made regarding a prior investor.
8. Respondents agree with paragraph 24.
9. Respondents disagree with paragraph 25, 26, and 27. Investigator Rice made all his assumptions without complete facts. He did not know about the proposed partnership between the respondents and the prior tenant. Tables and chairs were in the pictures when the Business Plan (Exhibit S-3) was written because the Respondents had made an agreement to purchase all the fixtures and tenant improvements from the prior tenant. The value of the tenant improvements and their costs plus the breakdown of what the additional funds requested in the form of a LOAN would be used for is in the Business Plan on pages 9 & 10. When the partnership did not evolve the tenant improvements and their inherent costs would pass to the Respondents as well as the value of \$150,000. Securing the lease would include the improvements.
10. Respondents disagree with paragraph 28. Nowhere in the Business Plan (Exhibit S-3) or the Promissory Note (Exhibit S-4) is the word "investor" used. The terminology clearly stated is for a "lender" and "lender's return." The investor terminology quoted is misleading and misrepresented statements and verbiage.
11. Respondents disagree with paragraph 29. Investigator Rice assumes there is no walk-in refrigerator. Had he done a thorough investigation and viewed the inside of the suite he would have seen the completed walk-in.
12. Respondents disagree with paragraph 30. This is a misleading statement. The respondents had a confirmed offer to lease (Exhibit S-14.) The respondents had also received from Bixbee Management a lease agreement by e-mail to bring in for signing. This is another misrepresentation.
13. Respondents disagree with paragraph 31. The Business Plan (exhibit S-3) and any information provided to Investigator Rice clearly state the request for a loan. Mr. Rice is using the misleading terminology of "investor" to try to strengthen the Commissions allegations.
14. Respondents disagree with paragraphs 32 and 33. Investigator Rice telephoned the respondent's controller Ralph Richey, and asked for the "investment" document. Mr. Richey only provided an "example" document Promissory Note (Exhibit S-4) obtained from the internet. The respondents planned for any interested lender to complete their own due diligence regarding the viability of the project and consult with their own legal council to provide a suitable Promissory Note.
15. Respondents agree with paragraph 34.

16. Respondents disagree with paragraph 35. While there was a poor choice of wording and terminology used in the craigslist ad (Exhibit 10-a) the Business Plan (Exhibit S-3) clearly states the proper verbiage regarding a request for a loan and what the terms offered would be.
17. Respondents disagree with paragraph 36. The respondents planned for any interested lender to complete their own due diligence regarding the viability of the project and consult with their own legal council to provide a suitable Security Interest Note.
18. Respondents disagree with paragraph 37. This is a misleading statement. The Promissory Note (Exhibit S-4) only refers to a "Lender's Return."
19. Respondents agree with paragraphs 38 and 39.
20. Respondents disagree with paragraph 40. This statement has no relevance to this proceeding. Mr. Rogan's status of membership is immaterial. Mr. Rogan is listed as the "chef."
21. Respondents disagree with paragraph 41. This statement has no relevance to this proceeding.
22. Respondents agree with paragraph 42.
23. Respondents disagree with paragraph 43. No proof of funds passing through Dem Bonz operating business account has any bearing on this proceeding once a thorough investigation of facts is made.
24. Respondents disagree with paragraph 44. Investigator Rice's testimony misstates verbiage regarding "investment or investments." Mr. Rice was provided with documentation that refers specifically to "Lender's return." Mr. Rice's only evidence of the word "investor" is cited in a poorly written craigslist ad (exhibit S-10a.) All written documentation provided to a potential client is stated as "Loan or Lender."
25. Respondents disagree with paragraph 45. Dem Bonz website is set up like every other restaurant website with an "Investor Page." The potential client would still receive the Business Plan (Exhibit S-3) with the request for a loan.
26. Respondents agree with paragraph 46.
27. Respondents disagree with paragraph 47. This is a misstatement and an assumption by Investigator Rice which has no relevance to this proceeding.
28. Respondents agree with paragraph 48. And 49.
29. Respondents disagree with paragraph 50. The respondents planned for any interested lender to complete their own due diligence regarding the viability of the project and the principals involved.
30. Respondents disagree with paragraph 51. This is a misstatement. The Business Plan (Exhibit S-3) clearly states that a promissory note would be used for a loan.
31. Respondents disagree with paragraph 52. Compliance with the T.O. was followed immediately and the ad removed from craigslist. There was never a directive to shut down the website.

32. Respondents disagree with paragraph 53. There were no violations of the Act by "offering a security in the form of a promissory note in a fraudulent manner." There were plenty of interested prospects who were worried by the current economic downturn which the Division had no influence on. The Division only created a series of allegations, misstatements, and misrepresentations without thorough investigation.
33. Respondents disagree with paragraph 54. There was never a directive to shut down the website thus no violation.

CONCLUSIONS OF LAW

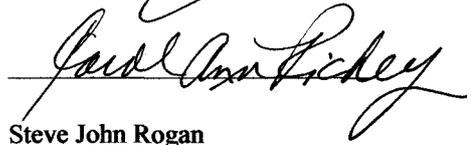
1. Respondents agree with paragraph 1.
2. Respondents disagree with paragraphs 2, 3,4,5,6,7,8,9, and 10. All of these paragraphs are misleading and misstatements. The Promissory Note (Exhibit S-4) was a sample and clearly states it is a request for a loan. Not a violation of A.R.S. s44-1801. Since the note is not a security there was no need for registration. Not a violation of A.R.S. s44-1841. The respondents did not act as dealers or salesmen. No offer of securities was ever made. No Violation of A.R.S. s44-1801(9)(22). All evidential documents request a loan. No violation of A.R.S. s1801(15). No unregistered security was ever offered in Arizona. No violation of A.R.S. s44-1841. No securities were ever offered within or from Arizona which did not require a registration as a dealer or salesman. No violation of A.R.S. s 44-1842. There was no commission of fraud in the offer of an unregistered security and no untrue statements or omissions of facts. No securities were offered. No violation of A.R.S. s 44-1991. Respondents have not violated the Act. There is no need for sanctions referencing A.R.S.s 44-2032, A.R.S. ss 44-1841, 44-1842, and 44-1991 and any other provisions of the act. No actions and conduct of the respondents constitute violations of the Act and there are no grounds for assessing administrative penalties pursuant to A.R.S. s44-2036.

ORDER

1. Respondents disagree with all of the orders proposed. The respondents have committed no violations of the Act and therefore are not subject to any fines or sanctions.

THEREFORE, based on the misrepresentations and misstatements, and the failure to provide any damaged witnesses or actual sales of alleged securities, or evidence of offers of unregistered securities it is requested that the Commission dismisses any further actions against STEVE JOHN ROGAN, CAROL ANN RICHEY, DEM BONZ BARBECUE RESTAURANTS, L.L.C., and PIZAZZ, L.L.C. It is also requested that all public records regarding these unfounded allegations be removed or dismissed from every reporting system within state, county or any national information, as these records are damaging to our continued efforts to move forward in our business and personal lives.

Respectfully submitted this 8th day of February 2010.



Steve John Rogan
Carol Ann Richey, Pro Se

8912 E. Pinnacle Peak Rd. #174
Scottsdale, AZ 85255
480 277-5413