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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB 23 2010

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

DOCKETED BY NR

IN THE MATTER OF:
STEVE JOHN ROGAN, a married man,
CAROL ANN RICHEY, a married woman,
DEM BONZ BARBEQUE RESTAURANTS,
L.L.C., an Arizona limited liability company,
PIZAZZ, L.L.C., an Arizona limited liability
company,
RESPONDENTS.

DOCKET NO. S-20654A-09-0068

DECISION NO. 71490

OPINION AND ORDER

DATE OF PRE-HEARING: March 23, 2009
DATE OF HEARING: July 14, 2009
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Steve John Rogan, in propria persona;
Ms. Carol Ann Richey, in propria persona; and
Mr. William Black, Staff Attorney on behalf of the
Securities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

On February 18, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and Notice of Opportunity for Hearing ("Notice") against Steve John Rogan, Carol Ann Richey, husband and wife, Dem Bonz Barbeque Restaurants, L.L.C. ("Dem Bonz") and Pizazz, L.L.C. ("Pizazz") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act

1 (“Act”) in connection with the offer and sale of securities in the form of notes and/or investment
2 contracts.

3 The Respondents were duly served with a copy of the T.O. and Notice.

4 On February 24, 2009, a request for hearing was filed by the Respondents.

5 On February 27, 2009, by Procedural Order, a pre-hearing conference was scheduled on
6 March 23, 2009.

7 On March 24, 2009, by Procedural Order, a hearing was scheduled on July 14, 2009, and
8 other procedural matters addressed.

9 On July 14, 2009, a full public hearing was commenced before a duly authorized
10 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was
11 present with counsel. Respondents appeared on their own behalf. Following the presentation of
12 evidence, the matter was taken under advisement pending submission of a Recommended Opinion
13 and Order to the Commission.

14 On August 28, September 2, 14 and 18, 2009, closing memorandum were filed by the parties.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. Steve John Rogan is an individual who, at all relevant times herein, was a resident of
20 Maricopa County, Arizona.

21 2. Carol Ann Richey is an individual who, at all relevant times herein, was a resident of
22 Maricopa County, Arizona.

23 3. Mr. Rogan and Ms. Richey were husband and wife at all relevant times herein and
24 were acting for their own benefit and for the benefit or in furtherance of their marital community.

25 4. According to Commission records, Dem Bonz is an Arizona limited liability company
26 formed on or about June 27, 2008, and maintains a mailing address of 8912 E. Pinnacle Peak Road,
27 No. 174, Scottsdale, Arizona 85255. Mr. Rogan and Ms. Richey were the only members of Dem
28 Bonz when it was formed. (Ex. S-8a)

1 5. Commission records show that Pizazz is an Arizona limited liability company formed
2 on or about December 4, 2008, with a mailing address of 8912 E. Pinnacle Peak Road, No. 174,
3 Scottsdale, Arizona 85255. These records show, at all relevant times herein, Ms. Richey was the
4 Statutory Agent and sole member of Pizazz. (Ex. S-7)

5 6. On January 27, 2009, Ms. Richey filed with the Commission an article of amendment
6 for Dem Bonz which, effective January 21, 2009, replaced Mr. Rogan and Ms. Richey as the
7 members of Dem Bonz and made Pizazz the sole member of Dem Bonz. (Ex. S-8b)

8 7. In support of the allegations raised in the T.O. and Notice with respect to
9 Respondents' alleged violations of the Act, the Division called as its witness, Mr. Michael J. Rice, a
10 special investigator with the Division.

11 8. The Division's investigation was initiated from what is termed an "ad shopping case."
12 These cases are begun by an investigator who reviews newspaper clippings, classified ads and
13 internet websites such as Craigslist. The initial investigator then assigns them to other investigators
14 for further investigation. (T. at p. 13)

15 9. The Respondents' ad appeared on Craigslist on or about January 22, 2009, and it was
16 assigned to Mr. Rice for further investigation and he was first given a copy of the ad on January 27,
17 2009. Respondents' ad stated in bold print and capital letters that they were seeking a "**FLAGSHIP**
18 **FRANCHISE INVESTOR NEEDED, 48% ROI!!!! (Scottsdale)**". (Ex. S-10a)

19 10. A number of additional Craigslist ads also appeared in Respondents' online
20 advertising seeking an investor until at least February 19, 2009. (Ex. S-10a thru S-10k).

21 11. These ads represented to readers of Craigslist that Respondents were seeking a so-
22 called "franchise investor" to invest \$85,000 "for initial operating capital and reserves" in a restaurant
23 in Scottsdale, Arizona. The Craigslist ads further represented that Respondents had purportedly
24 invested over \$150,000 for the development of a barbeque restaurant. (Tr. at p.16 and 17)

25 12. The Craigslist ads also referenced a website, www.dembonzbbq.com indicating that a
26 19 page business plan was available for a prospective investor to review. They further touted a 48
27 percent return on investment and plans for expansion. (Ex. S-10a thru S-10k)

28 13. In order to respond, readers of the ads were directed to email

1 dembonzbbq@gmail.com.

2 14. Mr. Rice testified that after seeing the first Craigslist ad dated January 22, 2009, he
3 viewed the Dem Bonz website and then printed it out as an 11 page document. (Tr. at p. 19) The first
4 page of the document for the Dem Bonz website references hickory smoked bbq and teriyaki and
5 refer to an investors page and also a section for an investor to log in or out of that portion of the
6 website. (Ex. S-11)

7 15. The website for Dem Bonz provides information with respect to the restaurant's menu,
8 catering, hours, and location and also contains a phone number for the restaurant, giving the
9 appearance that the restaurant is open. A section of the website is devoted to Respondent Rogan who
10 is described as the chef of Dem Bonz and the creator of the restaurant's concept in 1991 in southern
11 California with his plans to "do it again in Scottsdale." (Ex. S-11)

12 16. From reviewing the website, Mr. Rice had the impression that Dem Bonz was a going
13 business.

14 17. After learning of the purported restaurant's location, 14144 North 100th Street in
15 Scottsdale, Arizona, Mr. Rice drove to the location. He expected to see a completed restaurant since
16 it was represented that \$150,000 had already been expended on the development of the project.
17 However, when Mr. Rice arrived at the location, he "found a vacant suite." (Tr. at p. 21)

18 18. Mr. Rice testified that the address of the purported restaurant was located in a small
19 strip center and that although the space was vacant, it appeared to have had a restaurant previously
20 located there. Nevertheless, it was no longer in business. (Tr. at p. 21)

21 19. Testifying further concerning the condition of the vacant space, Mr. Rice stated
22 "There was very minimal furnishings... one bench-style seat... There were no tables or chairs or
23 nothing like that." (Tr. at p. 21)

24 20. Shortly after visiting the restaurant site, Mr. Rice used an undercover name and email
25 account as a prospective investor to send an email to dembonzbbq@gmail.com which was the email
26 address provided in the Craigslist ad. Acting as the prospective investor, Mr. Rice requested a copy
27 of the business plan for Dem Bonz. (Ex. S-6a)

28 21. Approximately 40 minutes later, on January 27, 2009, Mr. Rice received a return

1 email from Respondent Rogan. Mr. Rogan indicated that he had the buildout already complete and
2 needed an "Angel" investor to participate for a "48% ROI." Mr. Rogan's email went on to stated that
3 he "should be open in a few weeks" and that he still had an opening for an "additional investor." (Ex.
4 S-6a) (Tr. at p. 35)

5 22. Over a period of several days, Mr. Rice exchanged emails with Respondent Rogan.

6 23. Based on Mr. Rogan's earlier representation, Mr. Rice believed that someone had
7 already invested in the offering. (Tr. at p. 25)

8 24. Respondent Rogan's first email response on January 27, 2009, included an attachment
9 consisting of a 19 page document representing the "Business Plan" for Dem Bonz. The Business
10 Plan featured Mr. Rogan's name prominently on its first page. (Ex. S-3)

11 25. Mr. Rice reviewed the business plan document and referred to a photograph which
12 appeared beneath a caption at page four purportedly representing "Dem Bonz Today." He testified
13 that the restaurant represented in the photograph was not representative of what he had seen on
14 January 27th when he visited the restaurant's purported location and viewed what was primarily an
15 empty room. (Tr. at p. 30)

16 26. Mr. Rice recalled that the photograph in the business plan shows tables and chairs,
17 paintings on the wall, other décor and various restaurant equipment, and was not representative of
18 what he saw when he viewed the purported restaurant site in Scottsdale. He stated, "There was
19 nothing there." (Tr. at p. 31)

20 27. The business plan identifies both Respondent Rogan and Respondent Richey as the
21 founder/chef and co-founder/director of marketing, respectively, of Dem Bonz. Additionally,
22 according to the business plan, it is represented that the "founders have invested over \$150,000 into
23 the venture." (Ex. S-3)

24 28. According to the Dem Bonz business plan, of the \$85,000 which Respondents were
25 seeking from an investor, approximately \$50,000 would be set aside for interest payments and
26 reserves for working capital. The remaining funds would be expended on equipment and operating
27 expenses. The documents specified that an investor would receive a guaranteed minimum return of
28 15 percent per year interest on the declining balance of the loan plus an additional return of 15

1 percent of the company's net profit after taxes during the expected four year term of the proposed
2 loan. The document specified that either a floating debenture on the company's equipment and
3 fixtures as well as the promissory note for the loan would be guaranteed by the founders to ensure
4 repayment to the investor.

5 29. Based on Mr. Rogan's representations, Mr. Rice was led to believe that the equipment,
6 including a walk-in freezer, was in place for the business. (Tr. at p. 33)

7 30. Mr. Rice described contacting a representative of the management company for the
8 strip center where Dem Bonz was to be located to learn whether anyone was operating a business and
9 if the property was under lease. The representative of the property management company advised
10 Mr. Rice that although a lease had been offered to Respondents for Dem Bonz, they probably would
11 not lease to them. (Tr. at p. 27 and 28).

12 31. Both the Respondents' business plan and a representation by Respondent Rogan in
13 one of his emails to Mr. Rice indicated that an investor could expect to receive a 48 percent return on
14 his investment. (Ex. S-3 and S-6A)

15 32. After speaking with Respondent Rogan, Mr. Rice was told to contact Ralph Richey,¹
16 who according to the business plan for Dem Bonz, was the controller for Dem Bonz and who Mr.
17 Rogan also referred to as his "controller." Mr. Rogan indicated that Mr. Richey would send him a
18 copy of the promissory note. (Tr. at p. 38)

19 33. On February 9, 2009, it was actually Respondent Rogan who sent Mr. Rice an email
20 which contained an attachment consisting of the promissory note. (Tr. at p. 39) (Ex. S-4)

21 34. Mr. Rice testified that the maker of the note was set forth as Dem Bonz Barbeque
22 Restaurants, LLC by Carol Richey, managing member.² Additionally, Respondent Rogan and
23 Respondent Richey are identified as guarantors. (Tr. at p. 39)

24 35. The specimen note set forth an interest rate of 15 percent per year, consistent with that
25 promoted in the business plan. (Tr. at p. 40) However, the original Craigslist ad promoting the
26

27 ¹ Mr. Richey is Ms. Richey's ex-husband, and had been named as the Statutory Agent for Dem Bonz in its Articles of
Incorporation. (Ex. S-8a).

28 ² However, at this point in time, Pizazz was the sole member of Dem Bonz and Ms. Richey was the sole member of
Pizazz. (Ex. S-8b)

1 offering and an email from Mr. Rogan represented that an investor would earn a 48 percent return on
2 his investment. (Tr. at p. 40)

3 36. Further, while it was indicated in the business plan that an investor would have his
4 investment secured by an interest in restaurant equipment, there is no indication in the note of any
5 security interest being offered. (Tr. at p. 41)

6 37. Based on the terms of the note, an investor's return is related to the success of the
7 restaurant, because a higher rate of return results if the restaurant makes a profit after taxes. (Tr. at p.
8 41)

9 38. On February 19, 2009, after Mr. Rice personally served the T.O. and Notice on
10 Respondents, Mr. Rogan sent him a derogatory email. (Ex. S-6d)

11 39. However, Respondents complied with the T.O. and Notice after they were served by
12 removing their investment opportunity in Dem Bonz listing on Craigslist. (Tr. at p. 44)

13 40. At no time was Mr. Rice informed that Mr. Rogan was no longer a member of Dem
14 Bonz as of January 27, 2009. (Tr. at p. 47)

15 41. Mr. Rice's investigation showed that during Mr. Rogan had been employed as a
16 securities sales person, according to Central Registration Depository system, but he had been
17 terminated by his employer in June 1999. (Ex. S-9)

18 42. Based on bank records, in July 2008, Mr. Rogan and Ms. Richey opened a business
19 checking account in the name of Dem Bonz. However, an addendum to the bank's records indicates
20 that on January 26, 2009, Mr. Rogan's name was deleted, and Ms. Richey became the only
21 authorized signer on the account. (Ex. S-12)

22 43. According to the bank's records, the initial deposit made into the Dem Bonz account
23 was \$100 in July 2008. (Ex. S-12) Mr. Rice testified that there was no evidence that \$150,000 had
24 ever been deposited into the account and expended on behalf of Dem Bonz. (Tr. at p . 55)

25 44. Mr. Rice further testified that when he reviewed the business plan for Dem Bonz he
26 "took it as an investment offer" basing his opinion on the fact that he was being offered a 15 percent
27 a year rate of return on his investment plus the additional offer of another 15 percent of the
28 Company's net profits. (Tr. at p. 63)

1 45. During Mr. Rogan's cross-examination of Mr. Rice, Mr. Rogan attempted to argue
2 that he was seeking a lender rather than an "investor" to contribute to the start up of Dem Bonz.
3 However, Mr. Rice pointed out that the Dem Bonz website contained a section for an investor to log
4 in/out. (Ex. S-11)

5 46. Mr. Rice testified that he found no evidence that anyone actually invested in Dem
6 Bonz. (Tr. at p. 84)

7 47. Based on Mr. Rogan's representations, Mr. Rice was led to believe that Mr. Rogan
8 was the key principal of Dem Bonz. (Tr. at p. 88)

9 48. Mr. Rogan testified on behalf of the Respondents at the hearing. Mr. Rogan testified
10 that he is still planning to open Dem Bonz, but he has not yet obtained a lease for the restaurant nor
11 invested \$150,000. (Tr. at p. 90)

12 49. Mr. Rogan admitted that without an \$85,000 investment, Dem Bonz would not have
13 any equipment. (Tr. at p. 95)

14 50. Mr. Rogan further acknowledged that a reasonable investor would assume he was the
15 "owner" of the business, but argued that he was "set up." (Tr. at p. 96)

16 51. Mr. Rogan admitted that the business plan contemplated using a promissory note as a
17 vehicle for an investment. (Tr. at p. 102)

18 52. While the Craigslist advertisement for an investor was removed after the Division's
19 T.O. and Notice was served, Mr. Rogan admitted that the Dem Bonz website was still in operation at
20 the time of the hearing. (Tr. at p. 105)

21 53. Upon our review of the entire record in this matter, a preponderance of the evidence
22 establishes that Respondents committed multiple violations of the Act by offering a security in the
23 form of a promissory note in a fraudulent manner. It is to the Division's credit that no investors were
24 injured as a result of the Respondents' actions.

25 54. Respondents presented no evidence to credibly rebut the evidence presented by the
26 Division and the Dem Bonz website was not removed from the internet upon the service of the T.O.
27 and Notice. Therefore, they should be held liable for their untenable offering which resulted in their
28 violations of the Act and pay an administrative penalty.

CONCLUSIONS OF LAW

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2 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona
3 Constitution and A.R.S. §44-1801, *et seq.*

4 2. The investment in the form of a note offered by Respondents is a security within the
5 meaning of A.R.S. §44-1801.

6 3. The security was neither registered nor exempt from registration, in violation of
7 A.R.S. §44-1841.

8 4. Respondents acted as dealers and/or salesmen within the meaning of A.R.S. §44-
9 1801(9)(22).

10 5. The actions and conduct of Respondents constitute the offer of securities within the
11 meaning of A.R.S. §44-1801(15).

12 6. Respondents offered an unregistered security within or from Arizona in violation of
13 A.R.S. §44-1841.

14 7. Respondents offered a security within or from Arizona without being registered as a
15 dealer and/or salesman in violation of A.R.S. §44-1842.

16 8. Respondents committed fraud in the offer of an unregistered security, engaging in
17 transactions, practices or a course of business which involved untrue statements and omissions of
18 material facts in violation of A.R.S. §44-1991.

19 9. Respondents have violated the Act and should cease and desist pursuant to A.R.S.
20 §44-2032 from any future violations of the A.R.S. §§ 44-1841, 44-1842, and 44-1991 and all other
21 provisions of the Act.

22 10. The actions and conduct of Respondents constitute multiple violations of the Act and
23 are grounds for an Order assessing administrative penalties pursuant to A.R.S. §44-2036.

24 **ORDER**

25 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
26 under A.R.S. §44-2032, Respondents shall cease and desist from their actions described hereinabove
27 in violation of A.R.S. §§44-1841, 44-1842 and 44-1991.

28 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under

1 A.R.S. §44-2036, Respondents jointly and severally, shall pay as administrative penalties: for the
2 violation of A.R.S. §44-1841, the sum of \$500.00; for the violation of A.R.S. §44-1842, the sum of
3 \$500.00; and for the violation of A.R.S. §44-1991, the sum of \$1,000.00, for a total of \$2,000.00.

4 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
5 A.R.S. §44-2036, that Respondents jointly and severally, shall pay the administrative penalty ordered
6 hereinabove in the amount of \$2,000.00 payable by either cashier's check or money order, payable to
7 the "State of Arizona" and presented to the Arizona Corporation Commission for deposit in the
8 general fund for the State of Arizona.

9 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalty
10 ordered hereinabove, any outstanding balance plus interest at the maximum level amount may be
11 deemed in default and shall be immediately due and payable, without further notice.

12 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
13 any outstanding balance shall be in default and shall be immediately due and payable without notice
14 or demand. The acceptance of any partial or late payment by the Commission is not a waiver of
15 default by the Commission.





16 IT IS FURTHER ORDERED that the default shall render Respondents liable to the
17 Commission for its cost of collection and interest at the maximum legal rate.

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1 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
2 the Commission may bring further legal proceedings against the Respondent(s), including application
3 to the Superior Court for an Order of Contempt.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN COMMISSIONER
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11 COMMISSIONER COMMISSIONER COMMISSIONER
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13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 23rd day of FEBRUARY, 2010.

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19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21 DISSENT _____

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23 DISSENT _____

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SERVICE LIST FOR:

STEVE JOHN ROGAN, CAROL ANN RICHEY, DEM
BONZ BARBEQUE RESTAURANTS, L.L.C., and
PIAZZ, L.L.C.

DOCKET NO.:

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