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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

FEB 23 2010

DOCKETED BY [Signature]

In the matter of:
DAVID W. COLE and SIIRI COLE, husband
and wife
HIGHLINE ESTATES, LLC, an Arizona
limited liability company
MUTUAL FINANCIAL SERVICES, LLC
(d/b/a MFS Real Estate Division and MFS
Investments), an Arizona limited liability
company
DREAM CRAFT, LLC, an Arizona limited
liability company
SCOT A. OGLESBY (d/b/a Arizona Asset
Management) and LORI ANN OGLESBY,
husband and wife
RANDY K. WARD (CRD# 4137944) (d/b/a
Arizona Asset Management) and SHARON
WARD, husband and wife
Respondents.

DOCKET NO. S-20656A-09-0074

DECISION NO. 71493

ORDER TO CEASE AND DESIST, FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES AND CONSENT TO SAME

BY: SCOT A. OGLESBY and
LORI ANN OGLESBY

Respondents SCOT A. OGLESBY ("OGLESBY") and LORI ANN OGLESBY ("Respondent Spouse") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. ("Securities Act") with respect to this Order To Cease and Desist, Order for Restitution, and Order for Administrative Penalties ("Order"). Respondent OGLESBY and Respondent Spouse admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for the purposes of this proceeding and any other administrative proceeding before the Commission the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1
2
3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
4 Arizona Constitution and the Securities Act.

5 2. David W. Cole ("Cole") is an individual who at all relevant times resides in Arizona.

6 3. Highline Estates, LLC ("Highline") is an Arizona limited liability company
7 organized on or about May 9, 2005. According to Commission records, Cole was Highline's sole
8 manager from May 9, 2005 until July 2, 2006. Mutual Financial Services, LLC (d/b/a Mfs Real
9 Estate and Mfs Investments) ("Mfs") became Highline's sole manager from July 3, 2006 until the
10 present.

11 4. Mfs is an Arizona limited liability company organized on or about January 18, 2000.
12 According to Commission records, Mfs is solely managed by Dream Craft Homes, LLC.

13 5. SCOT A. OGLESBY (d/b/a Arizona Asset Management) ("OGLESBY") is an
14 individual who at all relevant times resides in Arizona.

15 6. LORI ANN OGLESBY was at all relevant times the spouse of OGLESBY. LORI
16 ANN OGLESBY is joined in this action under A.R.S. § 44-2031(C) solely for purposes of
17 determining the liability of the marital community. At all times relevant, OGLESBY was acting for
18 his own benefit, and for the benefit or in furtherance of the marital community.

19 7. OGLESBY may be referred to as "Respondent."

20 8. LORI ANN OGLESBY may be referred to as "Respondent Spouse."

21 9. Beginning in or around June 2006 until in or around February 2008, OGLESBY and
22 others offered and sold in Arizona at least \$688,761.53 in securities in the form of notes
23 (hereinafter "Investments") to at least 18 investors, the majority of which reside in Arizona.

24 10. The investors were elderly and unsophisticated. At least one investor prematurely
25 cashed in an annuity and was charged an early withdrawal penalty. Another investor cashed in an
26 annuity and sold a farm to raise money for the Investment.

1 11. Beginning in or around 2004, Cole formed a relationship with OGLESBY as both
2 Cole and OGLESBY had offices in the same building. At the time OGLESBY was a salesperson
3 with a company called Easy Street Financial Group, Inc. ("Easy Street"). OGLESBY told Cole he
4 could raise money for Cole's real estate projects.

5 12. Beginning in or around 2006, Cole sought to raise capital in order to fund Highline.
6 Highline was to build single family housing units on four undeveloped parcels of land, subdivided
7 into 65 lots, in Phoenix (hereinafter "Highline Project").

8 13. Beginning in or around 2006, Cole approached OGLESBY to sell the Investments
9 as a product to investors. The Investments were in the form of loan agreements in which investors
10 would provide funds that would be pooled together to fund the construction of the infrastructure
11 and the houses.

12 14. Cole met with OGLESBY to discuss raising funds for the Highline Project. After
13 at least a few meetings with Cole, OGLESBY agreed to locate investors to raise money by offering
14 and selling the Investments.

15 15. In May and June 2006, OGLESBY signed an employment application with Mfs.
16 Mfs, through Cole, signed an employment agreement with OGLESBY. OGLESBY was
17 compensated by Mfs for selling the Investments. According to Cole, OGLESBY was paid a six
18 percent commission on the amount raised.

19 16. Cole, on behalf of Highline and Mfs, hired OGLESBY without conducting a
20 background check or asking about any prior securities violations. OGLESBY, Easy Street and
21 another were subject to a Nevada Secretary of State Cease and Desist Order on November 24, 2004
22 regarding Nevada securities violations. OGLESBY did not disclose this order to the investors.

23 17. OGLESBY received the Investment documents from Cole. The Investment
24 documents named Highline as the borrower. The investors were promised their funds would be
25 invested for a 24-month term at 9.5 percent interest per year with interest paid monthly. The
26 Investments listed as security a corporate guarantee and deed of trust. The Investment included

1 terms that the deed of trust would be filed no later than six months from the date of the agreement.
2 It also stated that the investor's deed would be subordinate to any other deed of trust as Highline so
3 designates without obtaining permission from the investor.

4 18. The Investment documents listed OGLESBY as the Mfs Representative.

5 19. OGLESBY delivered the investor checks made payable to Highline to Cole.

6 20. OGLESBY did not discuss with Cole his background and the Highline Project.
7 OGLESBY did not inquire about Cole's real estate development background, how long Highline
8 had been in business, whether or not Highline had a business plan, whether Highline had the
9 building permits, offering memoranda, and the timeframe for completing the project. Therefore,
10 this information was not provided to the investors.

11 21. OGLESBY offered and sold the Investments to investors who sought to reinvest
12 their matured certificates of deposit ("CD") or annuities. Typically, when an investor would call,
13 visit, or be visited by OGLESBY to reinvest a CD or annuity, OGLESBY would offer and sell the
14 Highline Investment. OGLESBY sold at least one investor the Highline investment as well as a
15 prior investment in Easy Street.

16 22. OGLESBY told investors that the Highline investment paid 9.5 percent interest each
17 year for a two-year period, which was higher than the rates the investors would get in a CD or an
18 annuity. OGLESBY gave each investor a document which said Highline would pay investors a
19 monthly interest payment.

20 23. OGLESBY did not ask the investors about their financial condition and their ability
21 to withstand the loss.

22 24. OGLESBY failed to disclose to investors whether their deeds of trust would be as
23 first deeds of trust or be filed after another deed of trust. OGLESBY failed to disclose that the
24 property was already encumbered by a first mortgage.

25 25. At least one investor was not aware of, was not told about, and/or did not
26 understand the subordination paragraph in the loan agreement. The subordination agreement

1 allowed Highline at its discretion to change the order of place investors ahead of other investors
2 regardless of the date of investment.

3 26. OGLESBY met with at least one investor who had previously invested with
4 OGLESBY while OGLESBY was with Easy Street. OGLESBY told the investor about Highline.
5 This same investor met with Cole to further discuss the Investment. Cole showed the investor a
6 real estate magazine showing the types of houses that would be built. The investor cashed out their
7 annuity and sold a farm to invest in Highline.

8 27. OGLESBY failed to provide any detail regarding financial information of the
9 development to the investors. At least one investor received a "current projected land value" of the
10 Highline project. The projected land equity, after development and land acquisition costs, was
11 \$3,150,000. The investors did not receive any financial information on Highline.

12 28. After investing, some of the investors received a letter from Cole, as President of
13 Mfs, on Mfs letterhead welcoming them to the private lending program, which was the Highline
14 Investment. Cole enclosed a lenders' certificate showing Highline as the borrower of funds and a
15 loan agreement noting Highline as the borrower. Cole signed as the Highline representative. In at
16 least one instance, one lenders' certificate indicated that Mfs was offering the Investment. In at
17 least another instance, the lenders' certificate indicated Mfs was brokering the Investment. At least
18 one investor received a loan receipt from Mfs, with OGLESBY signing as the representative.

19 29. OGLESBY failed to disclose risks of investment, including, but not limited to: that
20 Highline was a new company with limited resources, that Cole had limited experience in real estate
21 development, that the Highline project was not fully funded, whether or not Highline had pre-sold
22 homes, that the investors did not have first deeds of trust on the property, the economic risks
23 relating to the ability of Highline to repay the investors, and that the investors could lose all or part
24 of their investment.

25 30. During the time OGLESBY was selling the Investments, the Commission took
26 action against OGLESBY, Easy Street and others by filing a Notice of Opportunity for Hearing

1 Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative
2 Penalties and for Other Administrative Action ("Notice") on September 5, 2006 for violations of
3 Arizona securities laws related to investment products offered by or through Easy Street.
4 OGLESBY continued to offer and sell the Investments but did not disclose the Commission Notice
5 to the investors.

6 31. On October 19, 2006, OGLESBY signed an Order to Cease and Desist, Order for
7 Restitution, Order for Administrative Penalties and for Other Administrative Action and Consent to
8 the Same: Scot Alan Oglesby and Lori Ann Oglesby ("Order") resolving the Commission Notice.
9 OGLESBY stopped selling the Investments in or around October 2006.

10 32. OGLESBY told investors that the Investment was safe because it was secured by
11 real estate. Although OGLESBY represented that the deeds of trust would be filed within six
12 months of signing the loan agreement, Highline recorded a majority of the investors' deeds of trust
13 in April 2008, which in at least one case was nearly two years after the investment was made.
14 OGLESBY failed to disclose to investors the existence of a first deed of trust that already
15 encumbered the property.

16 33. Although OGLESBY represented that the investors would receive monthly interest
17 payments, Highline did not pay all investors a monthly interest payment. At least one investor was
18 never paid a monthly interest payment. Another investor had to contact Cole to receive the
19 monthly interest payment, but did not receive the first monthly payment until about a year after
20 investing. In yet another instance, an investor received several monthly interest payments, but then
21 the payments stopped.

22 34. At all times relevant, OGLESBY was not registered with the Commission as a
23 dealer or salesman.

24 35. At all times relevant, the Investments were not registered with the Commission.

25 36. OGLESBY and others raised \$688,761.53 from 18 investors, 15 of which are
26 Arizona residents, returned \$37,191.17, for a total of \$651,570.36 that is owed to investors.

1 37. OGLESBY earned \$13,760.87 in commissions for selling the investment.

2 II.

3 CONCLUSIONS OF LAW

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

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

8 3. OGLESBY violated A.R.S. § 44-1841 by offering or selling securities that were
9 neither registered nor exempt from registration.

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

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

16 a) OGLESBY failed to disclose to at least one investor the Nevada Secretary of
17 State Cease and Desist Order against OGLESBY for violations of Nevada's securities laws;

18 b) OGLESBY misrepresented to at least one investor that the Investment was
19 safe even though the property was already encumbered by a mortgage secured by a first deed of
20 trust;

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

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

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

1 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
2 disburse shall be transferred to the general fund of the state of Arizona.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent and the
4 marital community of OGLESBY and Respondent Spouse, shall jointly and severally, pay an
5 administrative penalty in the amount of \$40,000.00. Payment shall be made to the "State of
6 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the
7 date of this Order until paid in full. The payment obligations for these administrative penalties
8 shall be subordinate to any restitution obligations ordered herein and shall become immediately
9 due and payable only after restitution payments have been paid in full or upon Respondents'
10 default with respect to Respondents' restitution obligations.

11 For purposes of this Order, a bankruptcy filing by Respondent or Respondent Spouse shall
12 be an act of default. If Respondent or Respondent Spouse does not comply with this Order, any
13 outstanding balance may be deemed in default and shall be immediately due and payable.

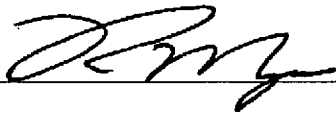
14 IT IS FURTHER ORDERED, that if Respondent or Respondent Spouse fails to comply
15 with this order, the Commission may bring further legal proceedings against that Respondent,
16 including application to the superior court for an order of contempt.

17 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
18 Order shall be deemed binding against any Respondent under this Docket Number who has not
19 consented to the entry of this Order.

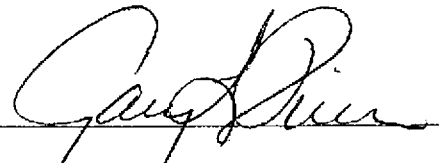
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IT IS FURTHER ORDERED that this Order shall become effective immediately.

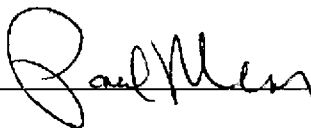
BY ORDER OF THE ARIZONA CORPORATION COMMISSION




CHAIRMAN



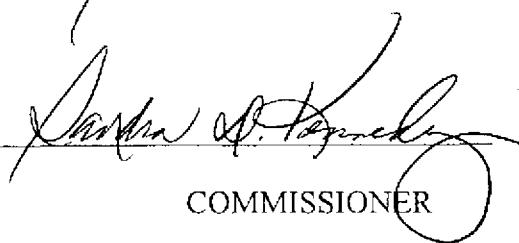
COMMISSIONER



COMMISSIONER

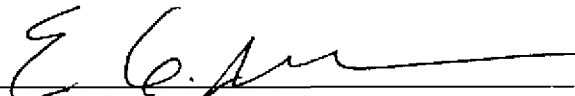


COMMISSIONER



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 23rd day of
February, 2010.



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator,
voice phone number 602-542-3931, e-mail sbernal@azcc.gov.

(AV)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents SCOT A. OGLESBY (“Respondent”) and LORI ANN OGLESBY
3 (“Respondent Spouse”) admit the jurisdiction of the Commission over the subject matter of this
4 proceeding. Respondent and Respondent Spouse acknowledge that Respondent and Respondent
5 Spouse have been fully advised of their right to a hearing to present evidence and call witnesses
6 and they knowingly and voluntarily waive any and all rights to a hearing before the Commission
7 and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the
8 Arizona Administrative Code. Respondent and Respondent Spouse acknowledge that this Order to
9 Cease and Desist, Order of Restitution and Order for Administrative Penalties (“Order”)
10 constitutes a valid final order of the Commission.

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

14 3. Respondent and Respondent Spouse acknowledge and agree that this Order is
15 entered into freely and voluntarily and that no promise was made or coercion used to induce such
16 entry.

17 4. Respondent and Respondent Spouse understand and acknowledge that Respondent
18 and Respondent Spouse have a right to seek counsel regarding this Order, and that Respondent and
19 Respondent Spouse have had the opportunity to seek counsel prior to signing this Order.
20 Respondent and Respondent Spouse acknowledge and agree that, despite the foregoing, they freely
21 and voluntarily waive any and all right to consult or obtain counsel prior to signing this Order.

22 5. Respondent and Respondent Spouse admit only for the purposes of this proceeding
23 and any other administrative proceeding before the Commission the Findings of Fact and
24 Conclusions of Law contained in this Order; and consent to the entry of this Order by the
25 Commission the Findings of Fact and Conclusions of Law contained in this Order. Respondent
26 and Respondent Spouse agree that they shall not contest the validity of the Findings of Fact and

1 Conclusions of Law contained in this Order in any present or future administrative proceeding
2 before the Commission.

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

9 7. While this Order settles this administrative matter between Respondent, Respondent
10 Spouse, and the Commission, Respondent and Respondent Spouse understand that this Order does
11 not preclude the Commission from instituting other administrative or civil proceedings based on
12 violations that are not addressed by this Order.

13 8. Respondent and Respondent Spouse understand that this Order does not preclude
14 the Commission from referring this matter to any governmental agency for administrative, civil, or
15 criminal proceedings that may be related to the matters addressed by this Order.

16 9. Respondent and Respondent Spouse understand that this Order does not preclude
17 any other agency or officer of the state of Arizona or its subdivisions from instituting
18 administrative, civil, or criminal proceedings that may be related to matters addressed by this
19 Order.

20 10. Respondent agrees that Respondent will not apply to the state of Arizona for
21 registration as a securities dealer or salesman or for licensure as an investment adviser or
22 investment adviser representative until such time as all restitution and penalties under this Order
23 are paid in full.

24 11. Respondent agrees that Respondent will not exercise any control over any entity
25 that offers or sells securities or provides investment advisory services within or from Arizona until
26 such time as all restitution and penalties under this Order are paid in full.

1 12. Respondent agrees that Respondent will not sell any securities in or from Arizona
2 without being properly registered in Arizona as a dealer or salesman, or exempt from such
3 registration; Respondent will not sell any securities in or from Arizona unless the securities are
4 registered in Arizona or exempt from registration; and Respondent will not transact business in
5 Arizona as an investment adviser or an investment adviser representative unless properly licensed
6 in Arizona or exempt from licensure.

7 13. Respondent and Respondent Spouse agree that they will continue to cooperate with
8 the Securities Division including, but not limited to, providing complete and accurate testimony at
9 any hearing in this matter and cooperating with the state of Arizona in any related investigation or
10 any other matters arising from the activities described in this Order. This provision shall not
11 constitute a waiver of Respondent's state and federal rights against self-incrimination.

12 14. Respondent and Respondent Spouse acknowledge that any restitution or penalties
13 imposed by this Order are obligations of Respondent, as well as the marital community.


14 15. Respondent and Respondent Spouse consent to the entry of this Order and agree to
15 be fully bound by its terms and conditions.

16 16. Respondent and Respondent Spouse acknowledge and understand that if
17 Respondent or Respondent Spouse fail to comply with the provisions of the order and this consent,
18 the Commission may bring further legal proceedings against them, including application to the
19 superior court for an order of contempt.

20 17. Respondent and Respondent Spouse understand that default shall render
21 Respondents and the marital community of Respondent Spouse liable to the Commission for its
22 costs of collection and interest at the maximum legal rate.

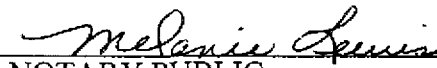
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1 18. Respondent and Respondent Spouse agree and understand that if Respondent or
2 Respondent Spouse fail to make any payment as required in the Order, any outstanding balance
3 shall be in default and shall be immediately due and payable without notice or demand.
4 Respondent and Respondent Spouse agree and understand that acceptance of any partial or late
5 payment by the Commission is not a waiver of default by Commission.

6
7 
8 SCOT A. OGLESBY

9 STATE OF ARIZONA)
10) ss
11 County of)

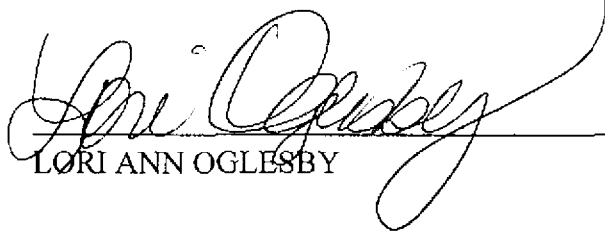
12 SUBSCRIBED AND SWORN TO BEFORE me this 11 day of December, 2009.

13
14 
15 NOTARY PUBLIC

15 My commission expires:

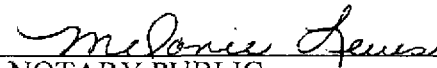
16 Nov 4, 2010



17
18 
19 LORI ANN OGLESBY

20 STATE OF ARIZONA)
21) ss
22 County of)

23 SUBSCRIBED AND SWORN TO BEFORE me this 11 day of December, 2009.

24 
25 NOTARY PUBLIC

25 My commission expires:

26 Nov 4, 2010



1 SERVICE LIST FOR:

ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY: SCOT A.
OGLESBY AND LORI ANN OGLESBY

4 DOCKET NO.:

S-20656A-09-0074

6 Scot A. Oglesby and Lori Ann Oglesby
7 515 East Carefree Highway, No. 824
8 Phoenix, AZ 85085
9 Respondent

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