

OPEN MEETING ITEM

3/18/10



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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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SECURITIES DIVISION
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Phoenix, AZ 85007
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FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

MEMORANDUM

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

Arizona Corporation Commission
DOCKETED

MAR - 8 2010

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

DOCKETED BY *mjn*

DATE: March 8, 2010

RE: John W. Pacheco, *et al.* (Docket No. S-20688A-09-0326); Order to Cease and Desist, for Restitution, and for Administrative Penalties and Consent to Same by: John W. Pacheco, Angela Pacheco, Financial American Corporation, The Financial American Group, LLC, and American Apartment Fund XI, LP

CC: Ernest G. Johnson, Executive Director

Attached is a proposed Order to Cease and Desist, for Restitution, and for Administrative Penalties and Consent to Same by: John W. Pacheco, Angela Pacheco, Financial American Corporation, The Financial American Group, LLC, and American Apartment Fund XI, LP (the "Order"). The Order finds that, from October 2004 to November 2007, Respondents offered investments to seven investors and raised from them \$4,250,000. Respondents represented that they would buy and resell real estate and that the investors would share in the profits. Respondents did not disclose that the investors' money would be commingled into Respondents' general operating accounts and could be used to pay expenses unrelated to the investments. Respondents have repaid investors \$2,400,000.

The Order finds that Respondents violated A.R.S. §§ 44-1841, 44-1842, and 44-1991 by offering and selling unregistered securities while being unregistered and by violating the anti-fraud provisions of the Securities Act. The Order requires Respondents to cease and desist their activity, pay \$1,850,000 in restitution, and pay an administrative penalty in the amount of \$125,000.

The Division believes that the Order is appropriate to protect the public welfare.

Originator: Aaron S. Ludwig

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of	}	DOCKET NO. S-20688A-09-0326
JOHN W. PACHECO and ANGELA PACHECO, husband and wife;	}	DECISION NO. _____
BILL L. WALTERS and JACQUELYN WALTERS, husband and wife;	}	ORDER TO CEASE AND DESIST, FOR RESTITUTION, AND FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY:
FINANCIAL AMERICAN CORPORATION, a Nevada corporation;	}	
THE FINANCIAL AMERICAN GROUP, LLC, a Delaware limited liability company;	}	FINANCIAL AMERICAN CORPORATION
AMERICAN APARTMENT FUND XI, LP, a Delaware limited partnership;	}	THE FINANCIAL AMERICAN GROUP, LLC
Respondents.	}	AMERICAN APARTMENT FUND XI, LP

Respondents JOHN W. PACHECO (“PACHECO”), ANGELA PACHECO, FINANCIAL AMERICAN CORPORATION (“FAC”), THE FINANCIAL AMERICAN GROUP, LLC (“TFAG”), and AMERICAN APARTMENT FUND XI, LP (“AAF”), 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, for Restitution, and for Administrative Penalties (“Order”). Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and AAF admit the jurisdiction of the Arizona Corporation Commission (“Commission”). Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and AAF consent to entry of the Order without admitting or denying any of the Findings of Fact and Conclusions of Law contained in the Order, without trial of any issue of fact or law pertaining to

1 this Order and provided that no Findings of Fact or Conclusions of Law contained in the Order
2 shall be attributed to, effective against or binding upon Respondents PACHECO, ANGELA
3 PACHECO, FAC, TFAG, and AAF for any purpose other than in this case or any other proceeding
4 before the Commission involving any of them. Nothing herein shall have any collateral estoppel or
5 res judicata effect against the Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and
6 AAF for any purpose except for any proceeding before the Commission involving any of them.
7 Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and AAF consent to the entry of
8 this Order by the Commission.

9 **I.**

10 **FINDINGS OF FACT**

11 1. JOHN W. PACHECO is an individual who, at all relevant times, resided in Maricopa
12 County, Arizona. PACHECO is the CEO, chairman of the board, and sole director of FINANCIAL
13 AMERICAN CORPORATION.

14 2. FINANCIAL AMERICAN CORPORATION is a Nevada corporation doing
15 business in Arizona. FAC is both the managing member of THE FINANCIAL AMERICAN
16 GROUP, LLC, and the manager of AMERICAN APARTMENT MANAGEMENT COMPANY,
17 LLC ("AAMC").

18 3. THE FINANCIAL AMERICAN GROUP, LLC is a Delaware limited liability
19 company doing business in Arizona.

20 4. AMERICAN APARTMENT FUND XI, LP is a Delaware limited partnership doing
21 business in Arizona. AAMC is the general partner of AAF.

22 5. PACHECO, TFAG, and AAF may be referred to collectively as "Respondents."

23 6. ANGELA PACHECO was, at all relevant times, the spouse of PACHECO.
24 ANGELA PACHECO is joined in this action under A.R.S. § 44-2031(C) solely for purposes of
25 determining the liability of the marital community and may be referred to as "Respondent Spouse."
26

1 7. At all relevant times, PACHECO acted for his own benefit and for the benefit or in
2 furtherance of his and Respondent Spouse's marital community.

3 8. At all relevant times, Respondents were not registered as securities dealers or
4 salesmen.

5 9. From on or about October 2004 to November 2007 in Maricopa County, Arizona,
6 Respondents offered at least seven individuals/entities ("the Investors") investments in which
7 Respondents would purchase and resell certain real estate. With each of the Investors, Respondents
8 entered into a Deal Point Memorandum identifying the particular real estate that is the subject of the
9 investment.

10 10. The Deal Point Memoranda state, among other things, that Respondents will pay the
11 Investors the greater of 50 or 100 percent of their investment or 5 to 10 percent of the net profits on
12 selling the real estate.

13 11. Respondents represented that they, not the Investors, would solicit opportunities to
14 purchase real estate, find buyers to attempt to resell it to for a profit, purchase the real estate in the
15 name of one or more Respondents, and then manage all aspects of the resale of the real estate.

16 12. Respondents located land and apartment buildings to purchase, entered into contracts,
17 opened escrows, and deposited earnest money; however, escrows did not close.

18 13. Pursuant to terms set forth in the Deal Point Memoranda, the Respondents pooled
19 together a total of \$4,250,000 from Investors, and deposited the investment funds into general
20 operating accounts of TFAG and AAF.

21 14. Respondents did not disclose to the Investors that their investment funds would be
22 commingled into general operating accounts of TFAG and AAF and could be used to pay expenses
23 unrelated to the Investors' investments.

24 15. Respondents have repaid to the Investors amounts totaling \$2,400,000.

25 16. At all relevant times, the investments referred to above were not registered pursuant to
26 Articles 6 or 7 of the Securities Act.

II.

CONCLUSIONS OF LAW

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

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

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

9 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while
10 neither registered as dealers or salesmen nor exempt from registration.

11 5. Respondents violated A.R.S. § 44-1991 by making untrue statements or misleading
12 omissions of material facts. Respondents' conduct includes, but is not limited to, failing to disclose
13 to the Investors that their investment funds would be commingled into the general operating
14 accounts of TFAG and AAF and could be used to pay expenses unrelated to the Investors'
15 investments.

16 6. FAC directly or indirectly controlled TFAG as its managing member and it directly or
17 indirectly controlled AAF as the manager of its general partner AAMC. Therefore, FAC is jointly
18 and severally liable under A.R.S. § 44-1999 to the same extent as TFAG and AAF for their violations
19 of A.R.S. § 44-1991.

20 7. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.
21 § 44-2032.

22 8. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
23 2032.

24 9. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-
25 2036.

26

1 investor because the investor is deceased and the Commission cannot reasonably identify and
2 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
3 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
4 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
5 disburse shall be transferred to the general fund of the state of Arizona.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents
7 individually, FAC, and the marital community of PACHECO and Respondent Spouse, jointly and
8 severally, shall pay an administrative penalty in the amount of \$125,000. Payment shall be made
9 to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law. The
10 payment obligations for these administrative penalties shall be subordinate to any restitution
11 obligations ordered herein and shall become immediately due and payable only after restitution
12 payments have been paid in full or upon the default of Respondents, FAC, or Respondent Spouse
13 with respect to the restitution obligations of Respondents, FAC, and Respondent Spouse.

14 For purposes of this Order, a bankruptcy filing by any of the Respondents, FAC, or
15 Respondent Spouse shall be an act of default. If any Respondent, FAC, or Respondent Spouse
16 does not comply with this Order, any outstanding balance may be deemed in default and shall be
17 immediately due and payable as to that respondent.

18 IT IS FURTHER ORDERED that, if any Respondent, FAC, or Respondent Spouse fails to
19 comply with this order, the Commission may bring further legal proceedings against that
20 Respondent, FAC, or Respondent Spouse, including application to the superior court for an order
21 of contempt.

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

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN COMMISSIONER

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10 COMMISSIONER COMMISSIONER COMMISSIONER

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

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17 _____
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

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20 _____
21 DISSENT

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22 _____
23 DISSENT

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

25 (JC)

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CONSENT TO ENTRY OF ORDER

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2 1. Respondents, FAC, and Respondent Spouse admit the jurisdiction of the
3 Commission over the subject matter of this proceeding. Respondents, FAC, and Respondent
4 Spouse acknowledge that they have been fully advised of their right to a hearing to present
5 evidence and call witnesses and they knowingly and voluntarily waive 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. Respondents, FAC, and
8 Respondent Spouse acknowledge that this Order to Cease and Desist, for Restitution, and for
9 Administrative Penalties (“Order”) constitutes a valid final order of the Commission.

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

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

16 4. Respondents, FAC, and Respondent Spouse acknowledge that they have been
17 represented by an attorney in this matter; that they have reviewed this Order with their attorney
18 Brian J. Schulman (Greenberg Traurig, LLP); and that they understand all of the terms it contains.
19 Respondents, FAC, and Respondent Spouse acknowledge that their attorney has apprised them of
20 their rights regarding any conflicts of interest arising from dual representation. Respondents, FAC,
21 and Respondent Spouse acknowledge that they have each given their informed consent to such
22 representation.

23 5. Respondents, FAC, and Respondent Spouse consent to entry of the Order without
24 admitting or denying any of the Findings of Fact and Conclusions of Law contained in the Order,
25 without trial of any issue of fact or law pertaining to this Order and provided that no Findings of
26 Fact or Conclusions of Law contained in the Order shall be attributed to, effective against or

1 binding upon Respondents, FAC, and/or Respondent Spouse for any purpose other than in this
2 case or any other proceeding before the Commission involving Respondents, FAC, and/or
3 Respondent Spouse. Nothing herein shall have any collateral estoppel or res judicata effect against
4 the Respondents, FAC, and/or Respondent Spouse for any purpose except for any proceeding
5 before the Commission involving Respondents, FAC, and/or Respondent Spouse.

6 6. Subject to the provisions of paragraph 5 under this Consent to Entry of Order, by
7 consenting to the entry of the Order, Respondents, FAC, and Respondent Spouse agree not to take
8 any action or to make, or permit to be made, any public statement denying, directly or indirectly,
9 any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order
10 is without factual basis. Notwithstanding the foregoing, the Order is not intended to collaterally
11 estop or preclude the Respondents, FAC, and Respondent Spouse from defending themselves in
12 any civil proceeding to which the Commission is not a party or any criminal proceeding.
13 Respondents, FAC, and Respondent Spouse will undertake steps necessary to assure that all of
14 their agents and employees understand and comply with this agreement.

15 7. While this Order settles this administrative matter between Respondents, FAC,
16 Respondent Spouse, and the Commission, it is understood by Respondents, FAC, and Respondent
17 Spouse that this Order does not preclude the Commission from instituting other administrative or
18 civil proceedings based on violations that are not addressed by this Order.

19 8. Respondents, FAC, and Respondent Spouse understand that this Order does not
20 preclude the Commission from referring this matter to any governmental agency for
21 administrative, civil, or criminal proceedings that may be related to the matters addressed by this
22 Order.

23 9. Respondents, FAC, and Respondent Spouse understand that this Order does not
24 preclude any other agency or officer of the state of Arizona or its subdivisions from instituting
25 administrative, civil, or criminal proceedings that may be related to matters addressed by this
26 Order.

1 10. Respondents and FAC agree that they will not apply to the state of Arizona for
2 registration as a securities dealer or salesman or for licensure as an investment adviser or
3 investment adviser representative until such time as all restitution and penalties under this Order
4 are paid in full.

5 11. Respondents and FAC agree that they will not sell any securities in or from Arizona
6 without being properly registered in Arizona as a dealer or salesman, or exempt from such
7 registration; Respondents and FAC will not sell any securities in or from Arizona unless the
8 securities are registered in Arizona or exempt from registration; and Respondents and FAC will
9 not transact business in Arizona as an investment adviser or an investment adviser representative
10 unless properly licensed in Arizona or exempt from licensure.

11 12. Respondents, FAC, and Respondent Spouse agree that they will continue to
12 cooperate with the Securities Division by, including but not limited to, providing complete and
13 accurate testimony at any hearing in this matter and cooperating with the state of Arizona in any
14 related investigation or any other matters arising from the activities described in this Order.

15 13. PACHECO and Respondent Spouse acknowledge that any restitution or penalties
16 imposed by this Order are obligations of PACHECO as well as the marital community.

17 14. Respondents, FAC, and Respondent Spouse consent to the entry of this Order and
18 agree to be fully bound by its terms and conditions.

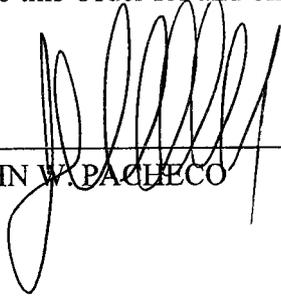
19 15. Respondents, FAC, and Respondent Spouse acknowledge and understand that, if
20 they fail to comply with the provisions of the order and this consent, the Commission may bring
21 further legal proceedings against them, including application to the superior court for an order of
22 contempt.

23 16. Respondents, FAC, and Respondent Spouse understand that default shall render
24 them liable to the Commission for its costs of collection and interest at the maximum legal rate.

25 17. Respondents, FAC, and Respondent Spouse agree and understand that, if they fail
26 to make any payment as required in the Order, any outstanding balance shall be in default and shall

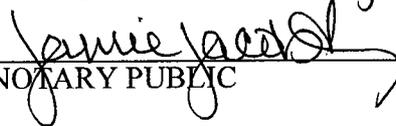
1 be immediately due and payable without notice or demand. Respondents, FAC, and Respondent
2 Spouse agree and understand that acceptance of any partial or late payment by the Commission is
3 not a waiver of default by Commission.

4 18. PACHECO represents that he is the CEO of FAC; that FAC is both the managing
5 member TFAG and the manager of AAMC, the general partner of AAF; and that he has been
6 authorized by FAC, TFAG, and AAF to enter into this Order for and on behalf of them.

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9 _____
10 JOHN W. PACHECO

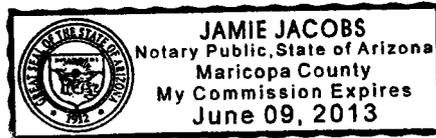
11 STATE OF ARIZONA)
12) ss
13 County of Maricopa)

14 SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

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16 _____
17 NOTARY PUBLIC

18 My commission expires:

19 6/9/2013



Mary Angela Pacheco
ANGELA PACHECO

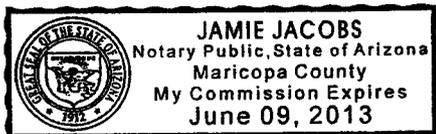
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STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

Jamie Jacobs
NOTARY PUBLIC

My commission expires:
6/9/2013



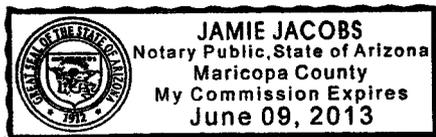
[Signature] CEO
FINANCIAL AMERICAN CORPORATION
By: John W. Pacheco
Its: CEO

STATE OF ARIZONA)
) ss
County of Maricopa)

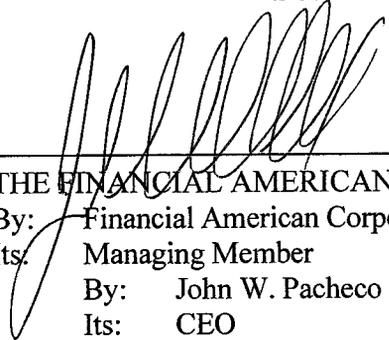
SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

Jamie Jacobs
NOTARY PUBLIC

My commission expires:
6/9/2013



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THE FINANCIAL AMERICAN GROUP, LLC
By: Financial American Corporation
Its: Managing Member
By: John W. Pacheco
Its: CEO

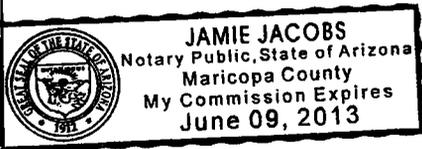
STATE OF ARIZONA)
) ss
County of Maricopa)

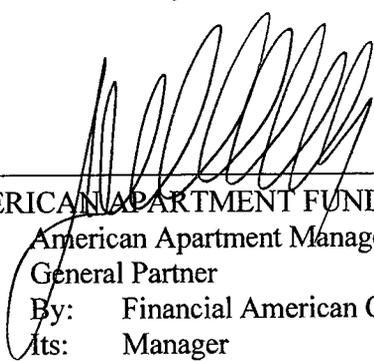
SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.



NOTARY PUBLIC

My commission expires:
6/9/2013





AMERICAN APARTMENT FUND XI, LP
By: American Apartment Management Company, LLC
Its: General Partner
By: Financial American Corporation
Its: Manager
By: John W. Pacheco
Its: CEO

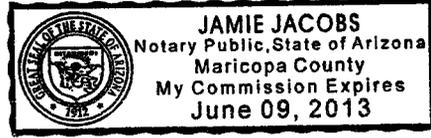
STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.



NOTARY PUBLIC

My commission expires:
6/9/2013



1 SERVICE LIST FOR: In the Matter of John W. Pacheco, et al.

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John W. Pacheco
Angela Pacheco
Financial American Corporation
The Financial American Group, LLC
American Apartment Fund XI, LP
c/o Brian J. Schulman, Esq.
Greenberg Traurig, LLP
2375 E. Camelback Rd., Ste. 700
Phoenix, AZ 85016

Bill L. Walters
Jacquelyn Walters
5 Ridgeline Dr.
Newport Beach, CA 92660