

OPEN MEETING ITEM



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Executive Director

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



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ARIZONA CORPORATION COMMISSION 1:23

2010 MAY 24

AZ CORP COMMISSION  
DOCKET CONTROL

ORIGINAL

DATE: MAY 24, 2010  
DOCKET NO.: S-20665A-09-0154

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

SPORTS DIMENSIONS, INC.,  
MARC HUBBARD AND JANE DOE HUBBARD  
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 2, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 10, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

MAY 24 2010

DOCKETED BY

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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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:  
9 SPORTS DIMENSIONS, INC., a North Carolina  
10 corporation,  
11 and  
12 MARC HUBBARD and JANE DOE HUBBARD  
13 husband and wife,  
14 RESPONDENTS.

DOCKET NO. S-20665A-09-0154

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

13 DATE OF PRE-HEARING CONFERENCE: May 14, 2009  
14 DATE OF HEARING: August 27, 2009  
15 PLACE OF HEARING: Phoenix, Arizona  
16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
17 APPEARANCES: Ms. Wendy Coy, Senior Counsel, on behalf  
18 of the Securities Division of the Arizona  
19 Corporation Commission.

19 **BY THE COMMISSION:**

20 On March 7, 2009, the Securities Division ("Division") of the Arizona Corporation  
21 Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and Notice of  
22 Opportunity for Hearing ("Notice") against Sports Dimensions, Inc. ("SDI") and Marc Hubbard and  
23 Jane Doe Hubbard, husband and wife (collectively "Respondents"), in which the Division alleged  
24 multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of  
25 securities in the form of notes. Jane Doe Hubbard ("Respondent Spouse") was joined in this action  
26 pursuant to A.R.S. § 44-2031(C) solely for purposes of affirming the liability of the marital  
27 community.

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

1 On April 24, 2009, an Answer was filed by the Respondent, Marc Hubbard, and while he did  
2 not specifically request a hearing, his filing of an Answer was treated as satisfying the requirements  
3 of A.R.S. § 44-1942 and A.C.C. R14-4-307 for the purpose of requesting a hearing.

4 On April 30, 2009, by Procedural Order, a pre-hearing conference was scheduled on  
5 May 14, 2009.

6 On May 14, 2009, at the pre-hearing conference, the Division appeared with counsel and Mr.  
7 Hubbard failed to appear. The Division indicated that it was attempting to reach a settlement with the  
8 Respondent, but in the interim requested that a hearing be scheduled.

9 On May 15, 2009, by Procedural Order, a hearing was scheduled for June 18, 2009.

10 On June 17, 2009, the Division and Respondents, Mr. Hubbard and SDI, filed a Joint Motion  
11 to Continue the proceeding as they were continuing to negotiate a settlement. The parties further  
12 requested that the proceeding be rescheduled after August 13, 2009, to allow time for the approval of  
13 a Consent Order. By Procedural Order, the hearing was continued from June 18, 2009, to August 27,  
14 2009.

15 On August 27, 2009, a public hearing was commenced before a duly authorized  
16 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was  
17 present with counsel. Respondents failed to appear. Following the presentation of evidence, the  
18 matter was taken under advisement pending submission of a Recommended Opinion and Order to the  
19 Commission.

20 On October 7, 2009, the Division filed a post-hearing memorandum.

21 \* \* \* \* \*

22  
23 Having considered the entire record herein and being fully advised in the premises, the  
24 Commission finds, concludes, and orders that:

25 **FINDINGS OF FACT**

- 26 1. SDI was, at all relevant times herein, a North Carolina corporation that was  
27 incorporated in January 2002 and had its principal office in South Carolina. (Ex. S-2 and S-9)  
28 2. Respondent Marc Hubbard is an individual who, at all relevant times herein, resided

1 outside of the state of Arizona and was the president and CEO of SDI. (Tr. at p. 13) (Ex. S-2, S-6 and  
2 S-9)

3 3. There was no evidence submitted with respect to Respondent Jane Doe Hubbard or  
4 whether Mr. Hubbard is married.

5 4. Neither SDI nor Mr. Hubbard was registered with the Division as dealers or salesmen,  
6 nor has SDI registered any securities for sale in Arizona. (Ex. S-1)

7 5. In support of the allegations raised in the T.O. and Notice with respect to  
8 Respondents' alleged violations of the Act, the Division called as its witness, Ms. Peggy Scozzari, a  
9 special investigator with the Division.

10 6. According to the Division's investigator, its investigation of the Respondents began  
11 after an Arizona resident faxed a letter to the Division which the resident had received from SDI with  
12 Mr. Hubbard's name on it as president. (Tr. at p. 41) (Ex. S-6)

13 7. The SDI letter promoted an investment in Series 2009-A Convertible Corporate Notes  
14 that were "guaranteed" to yield 30 percent, provided an investor an opportunity to triple their money  
15 within 18 months and to make an investment in a "recession-proof industry." (Ex. S-6) The letter  
16 also represented that SDI had been in business for "twelve successful years" and the investment was  
17 offered in the form of a note yielding 30 percent annually and sold in units of \$10,000. The SDI  
18 letter further claimed that the notes would be convertible into company common stock at two dollars  
19 per share and that, in 18 months, the Company would go public at six to seven dollars per share.  
20 According to SDI's promotional letter, the company was involved in the business of promoting  
21 concerts.

22 8. The Division's investigator testified that the Arizona resident who received the SDI  
23 letter was not an accredited investor.

24 9. The Division's investigator indicated that the Division had not found any evidence of  
25 any Arizona investors in SDI's offering. (Tr. at p. 44)

26 10. The Respondents' letter informed prospective investors of a website operated by the  
27 Respondents ([www.sdiconcerts.com](http://www.sdiconcerts.com)) which would allow access to SDI offering documents. (Ex. S-6)

28 11. During the course of the Division's investigation, it was learned that Respondents,

1 SDI and Mr. Hubbard, had been found in violation of the California Corporations Code and its  
2 securities laws in 2006, and the State of Nevada's securities laws in 2009. (Ex. S-4 and S-5)

3 12. Additionally, the Division's investigation revealed that the State of North Carolina  
4 also found Respondents SDI and Mr. Hubbard in violation of North Carolina's securities laws in  
5 2007.

6 13. Further, the Division's investigation revealed that SDI and Mr. Hubbard appeared to  
7 have filed for an exemption from registration with a Regulation D in July 2002. (Ex. S-3)

8 14. On February 23, 2009, after completing an "Investor Accreditation" form<sup>1</sup> online, a  
9 Division investigator received an email from Mr. Hubbard as President/CEO of SDI which provided  
10 login information to access a Private Placement Memorandum of SDI. (Tr. at p. 24) (Ex. S-7)

11 15. According to Ms. Scozzari, the form had been completed by an undercover  
12 investigator. (Tr. at p. 25)

13 16. On February 25, 2009, Respondent Hubbard sent another email to the Division's  
14 undercover investigator and attached a PDF version of SDI's offering materials. (Tr. at p. 25) (Ex. S-  
15 8)

16 17. Although the SDI offering materials for what was purportedly a private placement  
17 appeared to require a password from an accredited investor, according to Ms. Scozzari, one could  
18 access SDI's website without logging in using a password. (Tr. at p. 26)

19 18. Included within this memorandum was a document which made representations of a  
20 guaranteed 30 percent annual return on investment, an opportunity to triple your money within 18  
21 months and a representation that the offering was in a "recession-proof industry" similar to the  
22 description provided in the letter (Ex. S-6) which had been sent to the Arizona investor earlier in  
23 February 2009.

24 19. The SDI offering materials represented that the Company was seeking to raise \$10  
25 million dollars with its offering and also provided a background on SDI, its management and  
26 Respondent Hubbard, indicating that he was its president and CEO. The materials further stated that

27 \_\_\_\_\_  
28 <sup>1</sup> The purported "Investor Accreditation" form represented and warranted to SDI that an individual who invested with SDI met the requirements of an accredited investor.

1 the company had posted a profit in each year of its operation since 1986 and claimed to have reached  
2 \$15 million in revenues in 2007. (Ex. S-8)

3 20. The Division's investigator testified that when she was logged in to the Respondents'  
4 website, she was able to access what was termed a private placement offering for SDI in the amount  
5 of \$10 million, for what were called "Convertible Corporate Notes Series 2009-A." (Tr. at p. 28)

6 21. The Division's investigator further testified that the offering specified that a minimum  
7 investment of \$10,000 was required from an investor, and it promised a 30 percent rate of return. (Tr.  
8 at p. 29)

9 22. Although earlier information within the offering materials indicated that SDI had been  
10 operating successfully since 1986, at another point reference is made to an eleven year operating  
11 history, which conflicted with the earlier statement. (Tr. at p. 31)

12 23. The Division's investigator further described inconsistency in the offering materials  
13 when it was referenced that SDI was formed in 1996. (Tr. at p. 32)

14 24. The Division's investigator also read into the record portions of the offering materials  
15 which conflicted with one another. (Tr. at p. 36)

16 25. While Respondents' offering materials at one point guarantee a 30 percent rate of  
17 return, the Division's investigator subsequently read into the record a statement as follows: "Neither  
18 the company nor its affiliates or professional advisors guarantee or warrant the projected results." (Tr.  
19 at p. 36) (Ex. S-8)

20 26. The Division's investigator further testified that the California Cease and Desist  
21 Order, which pre-dated the private placement offering by SDI referred to previously, was not  
22 disclosed in Respondents' offering materials. (Tr. at p. 40)

23 27. Additionally, the investigator stated that the North Carolina Security Division Cease  
24 and Desist Order also pre-dated the issuance of the Respondents' private placement memorandum  
25 and it was not disclosed either. (Tr. at p. 46)

26 28. According to the Division's investigator, shortly prior to the hearing, Respondents'  
27 website was no longer operating. (Tr. at p. 45)

28 29. Under the circumstances, based on the record, a preponderance of evidence establishes

1 that the Respondents, SDI and Marc Hubbard, committed multiple violations of the Securities Act by  
2 offering an investment opportunity in a security in the form of promissory notes in a fraudulent  
3 manner. It is to the Division's credit that no investors were injured as a result of the Respondents'  
4 actions and as a result, the T.O. should be made permanent since Respondents failed to appear and  
5 present any evidence which would rebut that presented by the Division. Therefore, Respondents, SDI  
6 and Mr. Hubbard, should be held liable for their offering which violated the Act and they should pay  
7 an administrative penalty.

### 8 CONCLUSIONS OF LAW

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

11 2. The investment in the form of notes offered by Respondents is a security within the  
12 meaning of A.R.S. § 44-1801.

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

15 4. Respondents acted as dealers and/or a salesman within the meaning of A.R.S. § 44-  
16 1801(9)(22).

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

19 6. Respondents offered an unregistered security within Arizona in violation of A.R.S. §  
20 44-1841.

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

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

26 9. Respondents have violated the Act and should cease and desist pursuant to A.R.S. §  
27 44-2032 from any future violations of the A.R.S. §§ 44-1841, 44-1842, and 44-1991 and all other  
28 provisions of the Act.



1 IT IS FURTHER ORDERED that if either of the Respondents, SDI or Marc Hubbard, fail to  
2 comply with this Order, the Commission may bring further legal proceedings against the  
3 Respondent(s), including application 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.  
6  
7

8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

9  
10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

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

17 \_\_\_\_\_  
18 ERNEST G. JOHNSON  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

MES:db

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1 SERVICE LIST FOR:

SPORTS DIMENSIONS, INC., MARC  
HUBBARD AND JANE DOE HUBBARD

2

3 DOCKET NO.:

S-20665A-09-0154

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