

415



WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER



MARK SENDROW
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

ARIZONA CORPORATION COMMISSION

OPEN MEETING ITEM
MEMORANDUM

RECEIVED
2001 SEP 19 P 3:40
AZ CORP COMMISSION
DOCUMENT CONTROL

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer
Arizona Corporation Commission

FROM: Mark Sendrow
Director of Securities

DATE: September 19, 2001

RE: Proposed Default Order as against Respondents Prosperity Investors Group, Neil R. McAllister, and Fred C. Ruscher; In the matter of Prosperity Investors Group, et al. (Docket No. S-03368A-00-0000)

CC: Brian C. McNeil, Executive Secretary

DOCKETED
SEP 19 2001
DOCKETED BY [signature]

Attached is a proposed Default Order to Cease and Desist and Order for Other Relief as against respondents Prosperity Investors Group ("Prosperity"), Fred C. Ruscher ("Ruscher"), and Neil R. McAllister ("McAllister"), collectively "Respondents," in the matter of Prosperity Investors Group, et al. The Order requires Respondents to cease and desist from further violations of the Securities Act of Arizona, to jointly and severally pay restitution in the amount of \$253,000, and to jointly and severally pay administrative penalties in the amount of \$50,000.

In approximately 1996, Ruscher and McAllister, through the Phoenix-based financial services firm of Prosperity, began engaging in and promoting a series of investment programs within and from Arizona. These programs ranged from a prime bank offering, to a Chinese bond venture, to a multi-level marketing program, to a commodities investment contract. During the next several years, Respondents raised a minimum of \$253,000 through the offer and sale of interests in these programs to a number of Arizona and other out-of-state investors. Despite the fact that these investors have recovered neither their investment principal nor the promised returns on their investments, Respondents have continued to maintain communications with these investors. The essence of these communications has been that governmental and other agencies have "interfered" with the Respondents' investment programs, and that the promised returns are still forthcoming.

The proposed Default Order finds that Respondents have offered and sold unregistered securities, offered and sold securities without the requisite registration, and made multiple material misrepresentations to investors by fabricating the existence of hidden European bond

markets, by exaggerating the available returns on their investment programs, and by maintaining that there were no risks associated with their investment programs. Additionally, the proposed Default Order finds that Respondents made material omissions in connection with the offer and sale of securities by failing to disclose to investors that investor funds were, in fact, being expended for personal use.

The proposed Default Order requires Respondents to cease and desist from any further violations of the Securities Act, to reimburse investors by jointly and severally paying restitution in the amount of \$253,000, and to jointly and severally pay administrative penalties in the amount of \$50,000 for multiple violations of the Securities Act of Arizona.

Respondents, who were each previously served with a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing, have failed to appear or otherwise challenge the aforementioned charges. As the time period for making such a challenge has since expired, a proposed Default Order reflecting these charges has been prepared and submitted with this memorandum.

The Division recommends the proposed Default Order on the grounds that it requires Respondents to reimburse investors for all known investor funds that Respondents have raised during their involvement with the above-referenced investment programs, and it additionally assesses administrative penalties to deter such future conduct.

Originator: Jamie Palfai

AG Assigned: Moira McCarthy

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 WILLIAM A. MUNDELL
Chairman
4 JIM IRVIN
Commissioner
5 MARC SPITZER
Commissioner
6

7
8 **In the matter of:**

9 **PROSPERITY INVESTORS GROUP,**
a/k/a **PROSPERITY INVESTORS TRUST,**
10 a/k/a **PROSPERITY EXPRESS LTD.,**
5126 West Olive, Suite #218
11 Glendale, Arizona 85302

12 **FRED C. RUSCHER**
2003 North 23rd Avenue, Apt. #163
13 Phoenix, Arizona 85009

14 **NEIL R. McALLISTER**
101 First Street
15 PMB #152
Los Altos, California 94022,
16

17 Respondents.
18

) DOCKET NO. S-03368A-00-0000
)
)

) DECISION NO. _____
)
)

) **ORDER TO CEASE AND DESIST**
) **AND ORDER FOR OTHER RELIEF**
) **AS AGAINST RESPONDENTS**
) **PROSPERITY INVESTORS GROUP,**
) **FRED C. RUSCHER AND NEIL R.**
) **McALLISTER**

19 **I.**

20 **INTRODUCTION**

21 On June 6, 2000, the Securities Division ("Division") of the Arizona Corporation Commission
22 ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing
23 ("TC&D") against PROSPERITY INVESTORS GROUP, a/k/a PROSPERITY INVESTORS
24 TRUST, a/k/a PROSPERITY EXPRESS LTD. (collectively "PROSPERITY"), NEIL R.
25 McALLISTER ("McALLISTER"), and FRED C. RUSCHER ("RUSCHER"). Some time later, on
26 September 19, 2000, this TC&D was personally served on both McALLISTER and PROSPERITY.

1 The Proof of Service relating to this personal service is attached and is incorporated herein as Exhibit
2 "A." The following summer, on July 12, 2001, the Division effected service on the remaining
3 Respondent in this matter, RUSCHER. Proof of Service on RUSCHER is also attached hereto, and is
4 incorporated herein as Exhibit "B."

5 The served TC&Ds afforded the Respondents the opportunity to request a hearing with the
6 Commission within 20 days from each of these Respondents' respective dates of service. Now ten
7 months past the date of their service, neither McALLISTER nor PROSPERITY has yet to request a
8 hearing or has otherwise made any form of appearance in this matter. RUSCHER, served over 45
9 days ago, has likewise elected to forego a hearing or otherwise appear in this matter. Accordingly,
10 Respondents McALLISTER, PROSPERITY and RUSCHER have chosen not to contest the
11 Division's allegations and have effectively admitted the Findings of Fact and Conclusions of Law set
12 forth in the TC&D.

13 **II.**

14 **FINDINGS OF FACT**

15 1. PROSPERITY, whose last known address was 5126 West Olive, Suite #218,
16 Glendale, Arizona, 85302, is an unincorporated Arizona business purportedly involved in the
17 investment services industry.

18 2. McALLISTER, whose last known address is 101 First Street, PMB #152, Los
19 Altos, California, 94022, has been a representative and "trust manager" of PROSPERITY since
20 at least 1996. During this time, McALLISTER has offered and sold a variety of security interests
21 to both Arizona and out-of-state investors.

22 3. RUSCHER, whose last known address is 2116 East 6th Avenue, Flagstaff,
23 Arizona, 86004, has been a representative and "trustee" of PROSPERITY since at least 1996.
24 During this time, RUSCHER has offered and sold a variety of security interests to both Arizona
25 and out-of-state investors.

26 ...

1 borrowing from her full retirement savings, enabling her to invest in RESPONDENTS'
2 commodities investment program.

3 10. RESPONDENTS stated that they would invest the investor's money in the
4 commodities market through the brokerage firm Iowa Grain, and that as a commission for their
5 services, RESPONDENTS would only take 25% of any profits made from the investment.

6 11. RUSCHER informed the investor that the minimum amount of money needed to
7 open an account with Iowa Grain was \$200,000, and that the investor would have to invest at least
8 this sum in order to get the commodities investment contract program started. According to the
9 compliance officer at Iowa Grain, there is no \$200,000 minimum to start an account at Iowa Grain.

10 12. On or about September 30, 1997, the investor received a \$220,000 check from the
11 aforementioned trust as a loan against her retirement account. She subsequently signed over the
12 check to RUSCHER, who deposited the funds in the PROSPERITY bank account in Phoenix on
13 October 2, 1997.

14 13. Account records show that on or about October 8, 1997, RUSCHER opened a
15 commodities account with Iowa Grain in the name of "PROSPERITY" in the amount of \$150,000.
16 These same records also reveal that RUSCHER steadily lost money on this account from the date of
17 its inception.

18 14. RUSCHER later opened two additional accounts with Iowa Grain. A second account
19 was opened in the name of PROSPERITY on or about January 8, 1998, and a third was opened in
20 the name of RUSCHER himself on or about March 12, 1998. RESPONDENTS transferred
21 approximately \$8,800 from the original investor-financed account to cover losses on the second of
22 the PROSPERITY accounts.

23 15. In addition to transferring investor funds to an unauthorized account,
24 RESPONDENTS withdrew a total of approximately \$37,000 from the investor-financed
25 commodities account on four separate occasions. A portion of these funds was used to pay interest
26 due on the investor's loan from the Texas trust. The remainder of the funds were deposited directly

1 back into a PROSPERITY bank account in Phoenix. The investor was unaware of this latter
2 activity.

3 16. The investor eventually inquired into the status of her funds, concerned with the lack
4 of information being made available to her on her investment. The investor then requested the
5 return of the remaining amount of her investment in the commodities investment program.
6 RUSCHER asked the investor to have patience, and began providing the investor with purported
7 account activity updates on her funds. These updates showed the investor making steady gains on
8 her commodities account each quarter. Iowa Grain account records show that these account activity
9 updates were fictitious and were not representative of the actual losses accruing against the
10 investor's funds.

11 17. In the spring of 1999, RUSCHER finally informed the investor that her entire
12 investment had been lost through commodities trading activity.

13 *ii.) Overseas Chinese Bond Trading Program*

14 18. During 1998, RESPONDENTS also began offering and selling investments in an
15 overseas Chinese bond-trading program.

16 19. In connection with these offers and sales, RUSCHER represented to investors that
17 the gold-backed bonds associated with this program were scheduled to generate funds through
18 trades by foreign banking institutions, and that once a "trading position" had been established,
19 returns would be remitted to the investors' "banking coordinates."

20 20. RUSCHER represented that this program was solely under the control of the foreign
21 trading banks, the International Monetary Fund (I.M.F.), and the United States Treasury.

22 21. The investors were not provided with any written background information
23 concerning this overseas Chinese bond-trading program, and none of the risks associated with such
24 an investment were discussed.

25 ...

26 ...

1 28. To effectuate the sale of this overseas debenture-trading program, McALLISTER
2 drafted a Private Party Loan Agreement for the investor. This agreement stated that for each
3 \$15,000 invested in the program, the investor would receive a return of \$7,500 each month for
4 twelve months.

5 29. This investor subsequently invested approximately \$15,000 in the program by
6 delivering a series of money orders to McALLISTER, payable to the now-dissolved Arizona
7 corporation "Abiquiu Beagh." McALLISTER was the "overseer" and head "cleric" of Abiquiu
8 Beagh, and was in fact the company's alter ego.

9 30. The investor used cash advances from her credit card to purchase the money orders
10 for her investment in this overseas debenture-trading program.

11 31. McALLISTER offered and sold investments in similar overseas debenture-trading
12 programs to at least three other investors during the spring and fall of 1997. These investors
13 invested at least \$8,000 in the programs, with documents from these programs promising annual
14 returns ranging from 150% to 600%.

15 32. As of April 2000, only one of the known investors who invested funds into this
16 program had received any form of repayment on his investment. This particular investor, who
17 initially invested \$5,000 in August of 1997, received one payment from McALLISTER for \$500
18 after making repeated demands for a refund.

19 iv.) "Page One" Multi-level Marketing Program

20 33. RESPONDENTS also offered prospective investors an investment in a program that
21 they termed "Page One." Describing this investment as a down-line networking investment,
22 McALLISTER explained to one prospective investor that she would have to pay \$55 to get into the
23 program, and that the money would then roll into seven undisclosed companies down line that the
24 investor did not need to know about. After entering the program, the investor would subsequently
25 start earning a "very large check" each week based on the number of individuals the investor could
26 bring into the program. McALLISTER stated that he would be willing to sponsor the investor to

1 get into the program if the investor agreed to share the program with her friends and to get others to
2 enter into the program.

3 34. McALLISTER told the investor that he was planning on building a 500 to 1000
4 person "down-line" himself. McALLISTER then mentioned that he was currently bringing in 15 to
5 20 people into the down-line program each week. At least two other individuals have confirmed
6 that McALLISTER offered and/or sold them interests in the "Page One" down-line program.

7 v.) Private Legacy Trust Program

8 35. RESPONDENTS also sought to promote a "Private Legacy Trust" multi-level
9 marketing scheme to prospective investors. Under this program, investors were solicited to open an
10 offshore trust with Fidelity International Bank, a bank McALLISTER represented as being chartered
11 through the Republic of Nauru. The fee for this service was \$150 (plus a newsletter subscription
12 fee), and investors in this program could subsequently earn money in a separate "cash available"
13 account by getting additional participants to join through "word of mouth" advertising.

14 vi.) High Leverage Trading Program

15 36. Starting in late 1996 to early 1997, RESPONDENTS also offered and sold securities
16 to investors in what McALLISTER termed a "High Leverage Program." Under this "asset
17 management" project, McALLISTER represented that he would be involved in an offshore trading
18 program backed by an undisclosed banking institution.

19 37. McALLISTER failed to provide any written information to investors about the
20 "High Leverage" project, either before or at the time investors made investments in this program.

21 38. McALLISTER represented to investors that the investment funds in this program
22 were 100% guaranteed, and that consequently, there was no risk to the investment funds.
23 McALLISTER also represented that the return on these leveraged investments would be 12 times
24 the original investment, payable to investors within one year and a day.

25 39. A minimum of three investors invested approximately \$11,000 in this program
26 during late 1996 to early 1997.

1 made untrue statements of material fact or omitted to state material facts which were necessary in
2 order to make the statements made not misleading in light of the circumstances under which they
3 were made; and (iii) engaged in transactions, practices or courses of business which operated or
4 would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes,
5 but is not limited to, the following:

- 6 a) RESPONDENTS misrepresented to offerees and investors that their overseas
7 bond trading programs involving European banking institutions were high yield
8 investment opportunities, when in fact these programs do not exist and are not
9 part of any legitimate international financial market.
- 10 b) RESPONDENTS misrepresented to offerees and investors that their overseas
11 bond-trading programs were secured by the U.S. Treasury, the I.M.F. and/or the
12 FDIC, when in fact these statements were false.
- 13 c) RESPONDENTS misrepresented to offerees and investors that their overseas
14 bond-trading programs were risk-free investments.
- 15 d) RESPONDENTS misrepresented to offerees and investors that the funds
16 invested in the overseas bond-trading programs would be placed through various
17 international banking institutions, when in fact most if not all of these funds
18 remained in RESPONDENTS' custody and control.
- 19 e) RUSCHER misrepresented to at least one investor that the commission for
20 managing an investor's commodities investment contract was limited to 25% of
21 any profits realized from the investment, when in fact they appropriated \$70,000
22 of her investment before any commodities investment activities had even begun.
- 23 f) RUSCHER misrepresented to at least one investor that her investment in a
24 commodities investment program was earning substantial profits for a stated
25 period of time, when in fact the investor's commodities account was steadily
26 losing money during precisely the same time frame.

- 1 g) RUSCHER failed to disclose to an investor that PROSPERITY had opened two
2 additional brokerage accounts with Iowa Grain in the names of "PROSPERITY"
3 and "RUSCHER," and that RUSCHER had used funds from the investor's
4 commodities account to cover losses on the additional PROSPERITY account.
- 5 h) RUSCHER failed to disclose to an investor that it was periodically withdrawing
6 funds from the investor's commodities account and depositing these monies back
7 into the PROSPERITY bank account in Phoenix.
- 8 i) McALLISTER failed to disclose to offerees and/or investors any information or
9 details concerning the companies that constituted the "Page One" down-line
10 networking investment opportunity.
- 11 j) McALLISTER failed to disclose to offerees and/or investors the risks associated
12 with both the "Page One" and "Private Legacy Trust" multi-level marketing
13 schemes he was promoting.
- 14 k) McALLISTER misrepresented to investors that his international "High
15 Leverage" asset-trading program was risk-free and 100% guaranteed, when in
16 fact such representations were false.
- 17 l) McALLISTER misrepresented to investors that his "High Leverage" asset-
18 trading program would produce a return to investors of 12 to 1 within a year and
19 a day, when in fact such representations were false.
- 20 m) McALLISTER failed to disclose to investors that his international "High
21 Leverage" asset-trading program does not exist in legitimate international
22 financial markets.
- 23 n) RESPONDENTS failed to disclose to investors that the securities being
24 offered and sold were not registered, filed or otherwise exempt from
25 registration with the Securities Division, and that RESPONDENTS were not
26 registered as dealers or registered salesmen in the state of Arizona.

III.

CONCLUSIONS OF LAW

1
2
3 1. The Arizona Corporation has jurisdiction over this matter pursuant to Article XV of
4 the Arizona Constitution and pursuant to the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.*
5 (the "Securities Act").

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

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

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

13 5. PROSPERITY, McALLISTER and RUSCHER violated A.R.S. § 44-1991 by (a)
14 employing a device, scheme or artifice to defraud; (b) making untrue statements or misleading
15 omissions of material facts; and (c) engaging in transactions, practices or courses of business which
16 operate or would operate as a fraud or deceit.

17 IV.

18 ORDER

19 THEREFORE, on the basis of the Commission's Findings of Fact and Conclusions of Law,
20 the following Order is appropriate, in the public interest, and necessary for the protection of
21 investors:

22 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032, 44-1972 and A.A.C. R14-4-307, that the
23 RESPONDENTS and their agents, servants, employees, successors, assigns, and those persons in
24 active concert or participation with them CEASE AND DESIST from the following activities:

25 ...
26

1 1) The offer and/or sale of any securities described herein within or from the state of
2 Arizona;

3 2) The offer and/or sale of any similar type of security within or from the state of
4 Arizona, unless such securities are registered with the Commission pursuant to Articles 6 and 7 of
5 the Securities Act of Arizona or are otherwise duly exempt from registration;

6 3) The solicitation or acceptance of funds from investors for the securities described
7 herein, or the solicitation or acceptance of funds from investors for any similar type of securities
8 offering within or from the state of Arizona, unless such securities are duly registered, notice filed or
9 exempt from registration;

10 4) The offer or sale of any securities within or from the state of Arizona unless the
11 requisite registration as dealers and/or salesmen is first obtained under Article 9 of the Securities Act
12 of Arizona, or unless an exemption from registration is applicable;

13 5) The offer and/or sale of any securities within or from the state of Arizona through a
14 material misrepresentation or omission, and/or through a course of conduct that would operate as a
15 fraud or deceit on investors; and

16 6) Any other activity constituting a violation of the Securities Act of Arizona.

17 IT IS FURTHER ORDERED that, pursuant to A.R.S. § 44-2032, RESPONDENTS shall
18 jointly and severally pay restitution to investors in the amount of \$253,000, payable to the state of
19 Arizona. This restitution amount is due and payable within thirty (30) days from the effective date
20 of this Order, and shall be distributed to known investors from RESPONDENTS' investment
21 programs on a pro rata basis.

22 IT IS FURTHER ORDERED that, pursuant to A.R.S. § 44-2036, RESPONDENTS shall
23 jointly and severally pay an administrative penalty in the amount of \$50,000, payable to the State
24 Treasurer, within thirty (30) days from the effective date of this Order for deposit into the general
25 fund of the state of Arizona. These administrative penalties shall be subordinated to the payment of

26 ...

1 the ordered restitution amount, and any payments RESPONDENTS make pursuant to this Order
2 shall be credited accordingly.

3 IT IS FURTHER ORDERED that the restitution and administrative penalties prescribed
4 above shall accrue interest at the legal rate from the effective date of this Order until paid in full.

5 IT IS FURTHER ORDERED that this Order shall become effective immediately upon the
6 date set forth below.

7
8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
9

10
11
12 CHAIRMAN

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
14 Executive Secretary of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the
17 Capitol, in the City of Phoenix, this ____ day of
_____, 2001.

18 _____
19 BRIAN C. McNEIL
Executive Secretary

20 _____
21 DISSENT

22 (JP)

23 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,
24 voice phone number 602-542-3931, E-mail shood@cc.state.az.us

RECEIVED STATE OF CALIFORNIA DEPARTMENT OF CORPORATIONS

RECEIVED

2000 SEP 27 P 3: 29

2000 SEP 27 P 3: 09

PROOF OF SERVICE

STATE CORP COMMISSION DOCUMENT CONTROL

STATE CORP COMMISSION DOCUMENT CONTROL

RE: Neil McAllister and Prosperity Investors Group

On SEPTEMBER 19, 2000, at 2:49 o'clock p.m., at 1147 43rd St, SACTO, California,

I personally served (name and, if applicable, title or capacity)

NEIL McALLISTER

the following documents:

- Docket No. S-03368A-00
1) Temporary Order to Cease and Desist and Notice of Opportunity for Hearing for Neil McAllister;
2) Temporary Order to Cease and Desist and Notice of Opportunity for Hearing for Prosperity Investors Group

I am exempt from registration as a California process server under Business and Professions Code Section 22350(b):

(b) Name, title, business address, and telephone number.

Diane Plaza, Investigator
Department of Corporations
980 9th Street, Suite 500
Sacramento, CA 95814
(916) 324-6912

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on 9/19/00 at Sacramento, California.

Diane Plaza
(Signature)

Exhibit A

DECISION NO.

STATE OF ARIZONA)

)

AFFIDAVIT OF SERVICE

County of Maricopa)

I, Gary J. Kirst, for the Securities Division of the Arizona Corporation Commission, hereby certify that on the 12th day of July 2001 at 10:15 a.m. I served a copy of Notice of Opportunity for Hearing Regarding TEMPORARY ORDER TO CEASE AND DESIST, Docket No. S-03368-A-00-0000, upon Nancy Lynne BONNER, 2116 E. 6th Ave, Flagstaff, Arizona 86004 for Frederick Charles RUSCHER by: personal service.

Notation: BONNER, TENANT, noted RUSCHER was her Landlord who resides in Las Vegas, Nevada and Flagstaff, Arizona. BONNER noted she accepts mail/correspondence for RUSCHER and delivers by mailing or handing over in person. BONNER did not want to provide the Post Office Box number in Las Vegas, Nevada she sends mail to. BONNER also mentioned Charles Ruscher, son of Frederick at one time picked up the mail but has since stopped. I found BONNER, a person of suitable age and discretion residing in one of two small buildings addressed, 2116 E. 6th Ave.

Gary J. Kirst 07-16-2001

AFFIANT

DATE

Gary J. Kirst

SUBSCRIBED AND SWORN TO BEFORE me this 16th day of

July, 2001

[Signature], NOTARY PUBLIC

My Commission Expires:

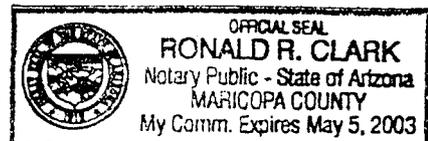


Exhibit B

DECISION NO. _____