



0000116952

ORIGINAL

44

NEW

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2001 SEP 26 P 2:59

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

Arizona Corporation Commission

DOCKETED

SEP 26 2001

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY	
-------------	--

In the matter of:

DOCKET NO. S-03413A-01-0000

CLAY EUGENE LAMBERT
3711 East Minton Place
Mesa, Arizona 85215
CRD No. 1959853,

Respondent.

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES, FOR
REVOCATION, AND FOR OTHER
AFFIRMATIVE ACTION

NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent has engaged in acts, practices and transactions that constitute violations of The Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

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

II.

RESPONDENT

2. Clay Eugene Lambert's ("LAMBERT") last known address is 3711 East Minton Place, Mesa, Arizona 85215.

3. LAMBERT first registered as a securities salesman in Arizona in October 1989 and has been registered in Arizona through different securities dealers for the majority of the time since then. LAMBERT was last registered as a securities salesman in Arizona with Locust Street Securities, Inc.

1 ("Locust Street") from January 14, 1999, until July 17, 2000. LAMBERT was discharged by Locust
2 Street for failing to cooperate with Locust Street auditors. LAMBERT has not associated with any
3 registered securities dealer since his termination from Locust Street. During relevant times described
4 herein, LAMBERT acted in the capacity of a securities dealer.

5 4. LAMBERT has been licensed in Arizona to sell life and disability insurance since
6 November 1988 and to sell variable insurance products since October 1989. All three of these licenses
7 are scheduled to expire at the end of 2001. From February 1992 to December 1996, LAMBERT was
8 also licensed in Arizona to sell property and casualty insurance.

9 III.

10 FACTS

11 A. Investments With Lambert

12 5. From approximately January 1991 until approximately January 2000, LAMBERT was the
13 financial adviser and insurance salesman for a married couple ("couple") who live in Arizona and for
14 the couple's company that is located in Arizona. The couple met LAMBERT through the wife's
15 parents who had bought insurance from LAMBERT. LAMBERT, over time, gained the trust and
16 confidence of the couple as their financial adviser and their insurance agent.

17 6. On or about October 3, 1994, the couple invested \$150,000 with LAMBERT. LAMBERT
18 told the couple that this money would be used to finance farming operations on a farm in North Dakota
19 that he had previously purchased from his father-in-law. LAMBERT did not actually purchase
20 farmland from his father-in-law until the Spring of 1996 or after. This couple made additional
21 investments with LAMBERT of \$200,000 and \$101,700 on or about May 15, 1996, and April 23,
22 1997, respectively. LAMBERT told the couple that these investments were to finance farming
23 operations and to purchase additional farmland in North Dakota.

24 7. LAMBERT failed to disclose to the couple before they invested, that most, if not all, of the
25 farmland he purchased would be encumbered with a mortgage or other lien held by a financial
26 institution, or by the seller of the property. Payments by LAMBERT for each mortgage or other lien
impeded his financial ability to return the couple's investment principal with accrued interest from

1 farm income. LAMBERT failed to disclose to the couple before they invested, financial statements
2 about himself or his farming operations in North Dakota, particularly, whether or not he could return
3 their investment principal with accrued interest if profits from the farming operations were insufficient
4 to do so. LAMBERT also failed to disclose to the couple before they invested, the specific use of their
5 investment monies. In addition, the couple did not have access to, nor did LAMBERT provide access
6 to, any of this information.

7 8. LAMBERT drafted and executed a promissory note for each of the first two investments by
8 the couple. The first promissory note for \$150,000 is dated October 3, 1994, with an interest rate of
9 15% per annum and is payable to the couple. The second promissory note for \$200,000 is dated May
10 15, 1996, with an interest rate of 12% per annum and is payable to a company that was owned by the
11 couple. Both promissory notes are unsecured. An identical paragraph in both promissory notes
12 requires LAMBERT to maintain term life insurance on his life payable to the couple in an amount
13 sufficient to pay the principal and accrued interest in full in the event of LAMBERT'S death.
14 LAMBERT never maintained term life insurance on his life payable to the couple as required by the
15 promissory notes. On at least a few occasions, LAMBERT told the couple that he had a term life
16 insurance policy on his life payable to the couple as beneficiaries. LAMBERT informed the couple
17 that the term life insurance policy would cover all of their investments with accrued interest, so if he
18 died, the couple would be reimbursed from the insurance proceeds.

19 9. Although LAMBERT did not draft and execute a promissory note for the couple's April 23,
20 1997, investment of \$101,700, he did orally promise the couple an 18% return on their investment.
21 The money for this investment came from the couple's money market account. LAMBERT persuaded
22 the couple to invest this money with him because he promised them a higher return than what they
23 were receiving from their money market account. The couple believed that this investment with
24 accrued interest was covered by a term life insurance policy on the life of LAMBERT as were the prior
25 two investments. More importantly, LAMBERT had previously told the couple that all their
26 investments with him were covered by a term life insurance policy on his life payable to them.

1 10. The couple's investments in LAMBERT'S farm and farming operations in North Dakota
2 totaled \$451,700 or more. LAMBERT promised the couple he would return their principal and pay
3 them interest on their investments from farm profits. LAMBERT has failed to pay any principal or
4 interest on the couple's investments.

5 **B. Dishonest or Unethical Practices**

6 11. From about January 1999 to January 2000, LAMBERT was the bookkeeper for the couple's
7 company. LAMBERT was paid \$3,000 per month. LAMBERT wrote checks to be signed by the
8 husband for invoices, made bank deposits, and engaged in other duties as bookkeeper for the couple's
9 company. All bank statements, invoices, and financial correspondence for the couple's company went
10 through LAMBERT. LAMBERT also had access to information concerning the personal bank
11 accounts, the social security numbers, and other financial information for the couple.

12 12. From about January 1999 through October 1999, LAMBERT misappropriated at least
13 seventeen checks written on the bank account of the couple's company. Most, if not all of the checks,
14 had the purported signature of the husband. The checks, which were deposited or cashed by
15 LAMBERT, were made payable to Lambert Financial Group, L.L.C., and totaled \$230,882 or more.
16 During that same time period, LAMBERT transacted at least two unauthorized withdrawals from the
17 bank account of the couple's company. The funds from these withdrawals were deposited into the
18 bank account of Lambert Financial Group, L.L.C., and totaled \$33,441.50 or more. LAMBERT was
19 the sole member of Lambert Financial Group, L.L.C. and conducted his securities and insurance
20 business under that name. The couple discovered only some of the misappropriated checks in the year
21 2000, when their accountant brought them to their attention. The other misappropriated checks were
22 discovered afterwards.

23 13. In or about April 1999, the couple requested LAMBERT return \$100,000 of the money they
24 had previously invested with him in his farm in North Dakota. LAMBERT agreed to promptly return
25 the money to the couple. LAMBERT told the couple the money would come from his bank account.
26 Instead, LAMBERT transacted, without the knowledge or authority of the couple, a loan against their

1 annuity policy and a partial surrender of their annuity. This annuity had previously been sold to the
2 couple by LAMBERT.

3 14. In or about April 1999, LAMBERT wrote four letters to the insurance company where the
4 couple had an annuity. All four letters were written without the couple's knowledge or consent. Three
5 of these letters were written by LAMBERT to acquire \$100,000 from the couple's annuity account. Of
6 these three letters, LAMBERT signed the couple's signatures on two of them without their
7 authorization. The third letter was signed by LAMBERT as the couple's agent. One of the letters with
8 the couple's unauthorized signatures requested that \$100,000 be immediately withdrawn from their
9 annuity account. Another letter with the couple's unauthorized signatures requested that a loan for
10 \$50,000 be issued against their annuity policy and that \$53,000 be withdrawn from their annuity
11 account. When the couple received two checks from the insurance company they discovered that
12 LAMBERT, without their knowledge or consent, had taken out a loan against their annuity policy and
13 had transacted a partial surrender of the couple's annuity. The couple demanded that the funds be
14 returned to their annuity account. Again, without the couple's authorization, LAMBERT signed the
15 couple's signatures on a fourth letter to the insurance company. This letter was for the purpose of
16 returning the checks to the insurance company. LAMBERT never returned the \$100,000 to the couple.

17 15. From about November 1999 to December 1999, LAMBERT misappropriated at least six
18 more checks written on the bank account of the couple's company. Most, if not all of the checks, had
19 the purported signature of the husband. The checks, which had been deposited or cashed, were made
20 payable to Lambert Financial Group, L.L.C., or Clay Lambert, and totaled \$41,080.86 or more. The
21 husband discovered these misappropriated checks when he reviewed bank statements and cancelled
22 checks for their company's bank account in or about December 1999 and January 2000.

23 16. In or about December 1999, subsequent to the initial discovery of misappropriated checks
24 by the husband, he confronted LAMBERT. LAMBERT admitted signing the husband's name, without
25 authorization, on checks written on the bank account of the couple's company. LAMBERT apologized

26 ...

1 for his actions. LAMBERT said he needed the money for his farm in North Dakota and promised to
2 return the money to the couple no later than the end of January 2000.

3 17. In or about February 28, 2000, LAMBERT delivered a cashier's check to the couple in the
4 amount of \$41,080.86. This cashier's check was payment for the checks LAMBERT had
5 misappropriated that were written on the couple's company bank account in November and December
6 1999. LAMBERT has not yet paid restitution to the couple for the other checks he misappropriated.

7 **IV.**

8 **VIOLATION OF A.R.S. § 44-1841**

9 **(Offer or Sale of Unregistered Securities)**

10 18. From on or about October 3, 1994, LAMBERT offered or sold securities in the form of
11 promissory notes, investment contracts, and evidence of indebtedness within or from Arizona.

12 19. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
13 Securities Act.

14 20. This conduct violates A.R.S. § 44-1841.

15 **V.**

16 **VIOLATION OF A.R.S. § 44-1842**

17 **(Transactions by Unregistered Dealer)**

18 21. LAMBERT offered or sold securities within or from Arizona while not registered as a dealer
19 pursuant to Article 9 of the Securities Act.

20 22. This conduct violates A.R.S. § 44-1842.

21 **VI.**

22 **VIOLATION OF A.R.S. § 44-1991**

23 **(Fraud in Connection with the Offer or Sale of Securities)**

24 23. In connection with the offer or sale of securities within or from Arizona, LAMBERT
25 directly or indirectly: (i) made untrue statements of material fact or omitted to state material facts which
26 were necessary in order to make the statements made not misleading in light of the circumstances under

1 which they were made; or (ii) engaged in transactions, practices or courses of business which operated
2 or would operate as a fraud or deceit upon investors. LAMBERT'S conduct includes, but is not limited
3 to, the following:

- 4 a) making untrue statements to the couple that he had purchased his father-in-law's farm, when
5 in fact, he had not yet purchased the farm;
- 6 b) omitting to disclose to the couple that most if not all of the farmland he purchased would be
7 encumbered with a mortgage or other lien that he would be required to make payments on
8 from farm income;
- 9 c) failing to disclose to the couple financial statements about himself or his farming operations
10 in North Dakota;
- 11 d) failing to disclose to the couple the specific use of their investment monies; and
- 12 e) making untrue statements to the couple that he would maintain term life insurance on his life
13 payable to the couple in an amount sufficient to pay the principal and accrued interest of
14 their investments when in fact he never did maintain this insurance.

15 24. This conduct violates A.R.S. § 44-1991.

16 **VII.**

17 **REVOCAION PURSUANT TO A.R.S. § 44-1962**

18 **(Revocation of Registration of Salesman)**

19 25. LAMBERT'S conduct is grounds to revoke his registration as a securities salesman with
20 the Commission pursuant to A.R.S. § 44-1962. Specifically, LAMBERT has:

- 21 a) as described above, made untrue statements of material fact or omitted to state material facts;
22 or, engaged in transactions, practices or courses of business which operated or would operate
23 as a fraud or deceit upon the couple and is therefore guilty of fraudulent acts or practices in
24 connection with the purchase or sale of securities pursuant to A.R.S. § 44-1962(A)(9);
- 25 b) misappropriated checks written on the couple's company bank account and is therefore
26 lacking in integrity pursuant to A.R.S. § 44-1962(A)(4) and has engaged in dishonest or

1 unethical practices in the securities industry pursuant to A.R.S. § 44-1962(A)(10) and
2 A.A.C. R14-4-130(A);

3 c) without authorization, signed the couple's signatures on letters in relation to the couple's
4 annuity, obtained a loan and transacted a partial surrender of the couple's annuity without
5 their knowledge or consent and is therefore lacking in integrity pursuant to A.R.S. § 44-
6 1962(A)(4) and has engaged in dishonest or unethical practices in the securities industry
7 pursuant to A.R.S. § 44-1962(A)(10) and A.A.C. R14-4-130(A)(6); and

8 d) made unauthorized use of funds from the couple's company bank account or converted
9 funds from the couple's company bank account for his personal benefit and is therefore
10 lacking in integrity pursuant to A.R.S. § 44-1962(A)(4) and has engaged in dishonest or
11 unethical practices in the securities industry pursuant to A.R.S. § 44-1962(A)(10) and
12 A.A.C. R14-4-130(A)(16).

13 **VIII.**

14 **REQUESTED RELIEF**

15 The Division requests that the Commission grant the following relief against LAMBERT:

- 16 1. Order LAMBERT to permanently cease and desist from violating the Securities Act,
17 pursuant to A.R.S. § 44-2032;
- 18 2. Order LAMBERT to take affirmative action to correct the conditions resulting from his acts,
19 practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 20 3. Order LAMBERT to pay the state of Arizona administrative penalties of up to five thousand
21 dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 22 4. Order the revocation of LAMBERT'S registration as a securities salesman pursuant to
23 A.R.S. § 44-1962; and
- 24 5. Order any other relief that the Commission deems appropriate.

25 ...

26 ...

IX.

HEARING OPPORTUNITY

Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Respondent or his attorney must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order against Respondent granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, ADA Coordinator, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this 26th day of September, 2001.



Mark Sendrow
Director of Securities