

NEW APPLICATION



0000117056

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2002 MAY 31 A 10: 51

AZ CORP COMMISSION
DOCUMENT CONTROL

1
2
3 WILLIAM A. MUNDELL
Chairman
4 JIM IRVIN
Commissioner
5 MARC SPITZER
Commissioner

6 In the matter of:
7
8 DAVID R. KRIZMAN
3620 N. Lynford Place
Tucson, Arizona 85749
9 Respondent.

) DOCKET NO. S-03486A-02-0000
)
) **NOTICE OF OPPORTUNITY FOR HEARING**
) **REGARDING PROPOSED ORDER TO**
) **CEASE AND DESIST FOR RESTITUTION**
) **FOR ADMINISTRATIVE PENALTIES OF**
) **REVOCATION AND FOR OTHER**
) **AFFIRMATIVE ACTION**

11
12 **NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

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

16 **I.**

17 **JURISDICTION**

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

20 **II.**

21 **RESPONDENT**

22 2. Respondent DAVID R. KRIZMAN ("KRIZMAN") is an individual whose last known
23 address is 3620 N. Lynford Place, Tucson, Arizona 85749.

24 ...

25 ...

26 ...

1 III.

2 FACTS

3 3. KRIZMAN was, at all relevant times, a registered securities salesman, NASD CRD
4 #1514846, in association with securities dealer SunAmerica Securities, Inc. ("SAS"), NASD CRD #
5 20068.

6 4. On February 26, 2002, SAS terminated KRIZMAN's association for failing to adhere to
7 the firm's policy and procedures; specifically, selling viatical settlement contracts away from SAS
8 as the sales were neither disclosed to nor approved by SAS nor recorded on the books and records
9 of SAS.

10 5. Between May 1998 and August 1998, KRIZMAN offered for sale and sold thirteen
11 viatical settlement contracts to six investors for a total of approximately \$439,716.

12 6. Viatical settlement contracts are securities subject to the provisions of the Securities
13 Act.

14 7. The viatical settlement contracts sold by KRIZMAN were not registered in conformity
15 with the Securities Act nor were they exempt from registration.

16 8. During his May 1, 2002 examination under oath ("EUO"), KRIZMAN testified he
17 believed viatical settlement contracts were insurance, not securities. KRIZMAN'S belief stemmed
18 from his discussions with other insurance agents and securities sales representatives and his
19 understanding of the decision in *S.E.C. v. Life Partners, Inc.* 87 F.3d 536 (D.C. Cir. 1996).¹

20 9. KRIZMAN maintains he disclosed his viatical business to SAS on SAS's Requests to
21 Engage in Independent Activities Form by listing he was engaged in selling insurance not offered
22 through SAS. However, KRIZMAN only disclosed he was selling term insurance. He did not
23 disclose he was selling viaticals.

24 _____
25 ¹ Contrary to Krizman's belief that viaticals are insurance, *Life Partners* specifically held that viatical settlement
26 contracts are not "the business of insurance." *Life Partners* at 542.

1 10. To keep his viatical business separate from SAS, KRIZMAN established an entity
2 called Advanced Funding Group (“AFG”) through which he transacted his viatical sales.
3 KRIZMAN established AFG ostensibly to ensure his clients understood that his viatical business
4 was not associated with SAS.

5 11. After establishing AFG, KRIZMAN entered into a contract with The Alpha Capital
6 Group, LLC, 104 E. 40th Street, Suite 703, New York, NY 10016 (“Alpha”) to sell viatical
7 settlement contracts offered through Alpha.

8 12. Neither AFG nor Alpha was registered with the Division in any capacity.

9 13. KRIZMAN’s contract with Alpha provided that commissions on sales would be paid for
10 “all funded customer’s orders amounts equal to fifteen percent (15%) of the amount of money
11 raised by the AGENT for contestable policy transactions.” The commission rate dropped to 8% for
12 uncontestable policies. KRIZMAN earned 15% on all viatical settlement contracts he sold,
13 receiving approximately \$65,173 from Alpha.

14 14. KRIZMAN used Alpha’s marketing materials in soliciting his customers. Those
15 materials claimed that Alpha’s viatical investments offered “**Complete Safety of Income**”, “**Zero**
16 **Risk to Principal**” and “**Secure Principal and Profits**”. However, Alpha’s materials were false
17 and misleading. Alpha and its escrow agent Viatical Escrow Services, LLC engaged in extensive
18 fraud relating to its viatical business thereby causing investors to lose some if not all of their
19 investments.

20 15. Alpha’s materials also stated that in the case of a contestable policy “[l]ess than **0.2%**
21 **of policies are ever cancelled or contested.**” In stark contrast, more than 50% of the policies sold
22 by KRIZMAN were cancelled by the insurer within the contestability period because of
23 misrepresentations by the insured on his or her insurance application.

24 16. After KRIZMAN spoke with Alpha, reviewed Alpha’s marketing materials, spoke with
25 other agents about viaticals in general, and reviewed a “60 Minutes” video tape about viaticals,
26 KRIZMAN concluded that this investment was “guaranteed money” and a “really good deal.”

1 Examination Under Oath of David Ronald Krizman, 41 (16), 42 (3). He then proceeded to present
2 Alpha's viatical settlement contracts to a few clients as a way to double their investment funds
3 while invested in a safe, secure, no-risk investment. Beyond these general representations,
4 KRIZMAN offered no substantive additional material facts or details about Alpha's viatical
5 settlement contracts other than those contained within Alpha's marketing materials.

6 17. At his EUO, KRIZMAN testified that he offered viaticals to those clients concerned
7 about low interest rates or the fact that their investments were tied to the market stating "it was a
8 nice way for them to **diversify** and not have exposure to the ups and downs of the market, and still
9 get a pretty good rate of return...." (Emphasis added.) Examination Under Oath of David Ronald
10 Krizman, 43 (18:21).

11 18. In finance diversification means "spreading the risk by putting assets in several
12 categories of investments...." BARRON'S FINANCIAL GUIDES – DICTIONARY OF FINANCE AND
13 INVESTMENT TERMS 156 (5th ed. 1998). In several instances, KRIZMAN's sales of viaticals
14 reduced the investor's diversification. For example, an investor's entire Keogh retirement plan
15 assets were transferred from mutual funds into viaticals. In another case, approximately 75% of
16 the investor's entire investment portfolio was used to purchase viatical settlement contracts. And
17 in a third case, an investor transferred her entire 401K account assets into viatical settlement
18 contracts.

19 19. KRIZMAN did not have reasonable grounds to recommend viatical settlement contracts
20 to some investors. An investor who had existing mutual funds previously purchased through
21 KRIZMAN, contacted KRIZMAN about making some additional investments. KRIZMAN
22 recommended viatical settlement contracts as a way of doubling her investment funds while
23 making a humanitarian gesture. In this particular case, KRIZMAN's use of the humanitarian
24 gesture was a particularly insidious selling tactic since the investor was emotionally vulnerable
25 since her spouse had recently passed away. After she invested, she asked KRIZMAN to sell her

26 ...

1 investment because she was uncomfortable with profiting from another person's misfortune.
2 KRIZMAN informed her that it would be difficult to sell her investment.

3 **IV.**

4 **VIOLATION OF A.R.S. § 44-1841**

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

6 3. From on or about May 1998 through August 1998, KRIZMAN offered or sold securities
7 in the form of viatical settlement contracts within or from Arizona.

8 4. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
9 Securities Act.

10 5. This conduct violates A.R.S. § 44-1841.

11 **VI.**

12 **REVOCATION PURSUANT TO A.R.S. § 44-1962**

13 **(Denial, Revocation or Suspension of Registration of Salesman)**

14 6. KRIZMAN'S conduct is grounds to revoke KRIZMAN'S registration as a securities
15 salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, KRIZMAN:

16 a) while registered as a salesman with SAS, effected securities transactions in the
17 form of viatical settlement contracts that were not recorded on the books and records of SAS at the
18 time of the transactions in violation of A.R.S. § 44-1962(10), Rule R14-4-130(17);

19 b) recommended to customers the purchase of a security without reasonable
20 grounds to believe that such recommendations were suitable in violation of A.R.S. § 44-1962(10),
21 Rule R14-4-130(4).

22 **V.**

23 **VIOLATION OF A.R.S. § 44-1991**

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

25 7. In connection with the offer or sale of securities within or from Arizona, KRIZMAN
26 directly or indirectly made untrue statements of material fact or omitted to state material facts which

1 ...
2 8. were necessary in order to make the statements made not misleading in light of the
3 circumstances under which they were made. KRIZMAN'S conduct includes, but is not limited to,
4 the following:

- 5 a) failing to disclose to investors that they were purchasing contestable policies;
- 6 b) misrepresenting the safety and risks associated with viatical settlement contracts in
7 general and failing to identify or discuss the risks specifically associated with
8 contestable policies;
- 9 c) misleading investors by representing they could sell their policies before the policies
10 matured notwithstanding that there was no public market available for resale or
11 other disposal of the investment;
- 12 d) failing to discuss the detrimental effect on the investor's return should the insured
13 live beyond the projected life expectancy.
- 14 e) failing to discuss the option of purchasing contestable versus uncontestable policies;
15 and
- 16 f) misrepresenting that investors could double their money.

17 9. This conduct violates A.R.S. § 44-1991.

18 **XII.**

19 **REQUESTED RELIEF**

20 The Division requests that the Commission grant the following relief against
21 KRIZMAN:

- 22 1. Order KRIZMAN to permanently cease and desist from violating the Securities Act,
23 pursuant to A.R.S. § 44-2032;
- 24 2. Order KRIZMAN to take affirmative action to correct the conditions resulting from
25 his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. §
26 44-2032;

1 ...
2 3. Order KRIZMAN to pay the state of Arizona administrative penalties of up to five
3 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4 4. Order the revocation of KRIZMAN'S registration as a securities salesman pursuant
5 to A.R.S. § 44-1962;

6 5. Order any other relief that the Commission deems appropriate.

7 **XIII.**

8 **HEARING OPPORTUNITY**

9 KRIZMAN may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A
10 request must be in writing and received by the Commission within 10 business days after service of
11 this Notice of Opportunity for Hearing. KRIZMAN or his attorney must deliver or mail the request
12 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
13 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and
14 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
15 Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

16 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
17 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
18 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
19 may, without a hearing, enter an order against KRIZMAN granting the relief requested by the
20 Division in this Notice of Opportunity for Hearing.

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

26 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated this 31ST day of May, 2002.



Victor Rodarte
Assistant Director of Securities

NEW APPLICATION

RECEIVED

Memorandum

2002 MAY 31 A 10: 51

DATE: 5/31/02
TO: Nancy Cole
Docket Control
FROM: Phillip Hofling
Securities Division
RE: In the Matter of David R. Krizman
Docket No. S-03486A-02-0000
Assigned Staff
CC: Mabel Aldridge

AZ CORP COMMISSION
DOCUMENT CONTROL

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert

Phillip Hofling (Staff Attorney)

(Staff Investigator)

Note: The Assistant Attorney General assigned to this matter is: Moira McCarthy.