

OPEN MEETING ITEM

3/16/11



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COMMISSIONERS
GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

ORIGINAL



SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
Paul Newman
Brenda Burns

Arizona Corporation Commission

DOCKETED

MAR 4 2011

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

DOCKETED BY

DATE: February 28, 2011

RE: *In re Kenneth Joseph Plein, et al., Docket No. S-20774A-10-0494*

CC: Ernest G. Johnson, Executive Director

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AZ CORP COMMISSION
DOCKET CONTROL

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties ("Order") and Consent to Same By Respondents Kenneth Joseph Plein and Mary Kathryn Plein individually, and on behalf of Respondents: (a) The Plein Family Trust; and (b) Plein Enterprises Incorporated (d.b.a. "Tri-Star Realty").

The Order finds that from approximately 1985 to 2010, Respondents issued, offered and sold unregistered securities in the form of notes and investment contracts (the "Investments") to raise capital for their purchase, renovation, lease and resell of residential and commercial real estate located in the greater Sun City, Arizona area. Respondents promised investors that the Investments would: (a) provide passive, monthly profits equaling 7 to 10 percent of the principal investments; and (b) be adequately secured by first position deeds of trust on the real estate purchased with investor funds. The Investments were documented by promissory notes, and were purchased for amounts ranging from \$10,000 to \$180,000. The Order finds that Respondents sold at least 346 separate Investments totaling \$19,851,868 to 98 investors residing in Arizona and 17 other states.

The Order finds that Respondents violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by offering unregistered securities while not being registered as a securities salesman or dealer, or exempt from registration.

The Order also finds that Respondents committed numerous violations of the anti-fraud provisions of the Act by, for instance, failing to disclose to investors that: (a) Respondents would not record any deeds of trust in favor of investors; (b) Respondents would often file multiple deeds of trust in favor of multiple investors that created multiple lien interests in a single piece of real estate, and resulted in first, second, third and even fourth position liens interests; and (c) as a result, many of the Investments would be under-secured and/or effectively unsecured.

The Order requires Respondents to permanently cease and desist from violating the Act, and to jointly and severally pay: (a) restitution totaling \$19,851,868; and (b) administrative penalties totaling \$250,000.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

In the matter of) DOCKET NO. S-20774A-10-0494
KENNETH JOSEPH PLEIN, a married man,) DECISION NO. _____
MARY KATHRYN PLEIN (a.k.a. "MARY KAY PLEIN"), a married woman,) ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY:
KENNETH JOSEPH PLEIN and MARY KATHRYN PLEIN (a.k.a. "MARY KAY PLEIN"), Co-Trustees of THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993,) RESPONDENT KENNETH JOSEPH PLEIN
PLEIN ENTERPRISES INCORPORATED (d.b.a. "TRI-STAR REALTY"), an Arizona corporation,) RESPONDENT MARY KATHRYN PLEIN
Respondents.) RESPONDENTS KENNETH JOSEPH PLEIN and MARY KATHRYN PLEIN, Co-Trustees of THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993
) RESPONDENT PLEIN ENTERPRISES INCORPORATED

17 Respondents KENNETH JOSEPH PLEIN, MARY KATHRYN PLEIN (a.k.a. "MARY KAY
18 PLEIN"), KENNETH JOSEPH PLEIN and MARY KATHRYN PLEIN (a.k.a. "MARY KAY
19 PLEIN"), Co-Trustees of THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993, and
20 PLEIN ENTERPRISES INCORPORATED (d.b.a. "TRI-STAR REALTY") ("Respondents"), elect
21 to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities
22 Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease
23 And Desist, Order For Restitution, Order for Administrative Penalties ("Order"), and Respondents'
24 Consent To Entry Of Order. Respondents admit the jurisdiction of the Arizona Corporation
25 Commission ("Commission"); admit only for purposes of this proceeding, and any other
26

1 administrative or civil proceeding to which the Commission or its authorized agent is a party; and
2 consent to the entry of this Order by the Commission.

3 **I.**

4 **FINDINGS OF FACT**

5 1. At all times relevant, Respondent KENNETH JOSEPH PLEIN ("KP") has been a
6 married man and an Arizona resident. At all times relevant, KP issued, offered and sold the
7 investments discussed below within and from Arizona in his individual capacity, and on behalf of
8 Respondents: (a) THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993 (the
9 "TRUST") as its Co-Trustee and investment salesman; and (b) PLEIN ENTERPRISES
10 INCORPORATED (d.b.a. "TRI-STAR REALTY") ("PE") as its co-owner, president, director and
11 investment salesman. In these capacities, KP promoted, controlled and bore responsibility for PE's
12 business and financial affairs, and its investor solicitation activities. At all times relevant, KP was a
13 real estate broker licensed by the Arizona Department of Real Estate ("Arizona DRE"),
14 #BR006126000 (the "License"). On or about October 1, 2010, KP's License was cancelled by the
15 Arizona DRE. KP has not been registered by the Commission as a securities salesman or dealer.

16 2. At all times relevant, Respondent MARY KATHRYN PLEIN (a.k.a. "MARY KAY
17 PLEIN") ("MP") has been a married woman and an Arizona resident. At all times relevant, MP
18 issued, offered and sold the investments discussed below within and from Arizona in her individual
19 capacity, and on behalf of: (a) the TRUST as its Co-Trustee and/or investment salesman; and (b)
20 PE as its co-owner, secretary, treasurer, director and/or investment salesman. In these capacities,
21 MP promoted, controlled and bore responsibility for PE's business and financial affairs, and its
22 investor solicitation activities. MP has not been registered by the Commission as a securities
23 salesman or dealer.

24 3. The TRUST was formed by KP and MP under Arizona law on or about December 1,
25 1993. At all times relevant, the Trust issued the investments discussed below within and from
26 Arizona. The TRUST has not been registered by the Commission as a securities dealer.

1 4. PE was formed as an Arizona corporation by KP and MP on May 7, 1985.¹ At all
2 times relevant, PE maintained its principal place of business in Sun City, Arizona, and it issued the
3 investments discussed below within or from Arizona. PE has not been registered by the Commission
4 as a securities dealer.

5 5. KP, MP, the TRUST and PE may be referred to as "Respondent(s)."

6 6. At all times relevant, KP and MP were married to each other, and were acting for
7 their own benefit and the benefit or in furtherance of their marital community.

8 A. Respondents' Real Estate Business

9 7. At all times relevant, Respondents represented to offerees and investors, both
10 verbally and in writing, that Respondents are in the business of buying, leasing, remodeling, and
11 reselling residential and commercial real estate and vacant land located in the greater Sun City,
12 Arizona area (the "Real Estate").

13 8. From approximately May 1985 to June 2010, Respondents issued, offered and sold
14 investments to the general public to raise capital to fund and operate Respondents' Real Estate
15 business (the "Investment(s)"). The Investments have not been registered as securities with the
16 Commission to be offered or sold within or from Arizona.

17 9. Respondents solicited offerees and investors, in part, by publishing and distributing
18 detailed one- or two-page letters drafted on PE letterhead that described the benefits of purchasing
19 the Investments, current Investment opportunities, and the positive opportunities available to
20 Respondents in the Real Estate market (the "Prospectus(es)").

21 10. A Prospectus dated September 22, 2008, drafted by KP and addressed to existing or
22 potential "Private Investors," states, in part, as follows:

23 Our private investor family has grown to 110 couples or individuals with
24 investments on [sic] over 200 properties, including rental homes, condos, duplexes,
land, office buildings, shopping center [sic], and rehab/fix-up properties.

25
26 ¹ At all times relevant, PE was licensed by the Arizona DRE as a "Real Estate Corporation,"
#CO001185000, with KP serving as its "Designated Broker." PE's license has been cancelled by the
Arizona DRE.

1 There are 55 Sun City foreclosures now on the market. This is the time for us to be
2 acquiring properties to fix up and re-sell or hold and rent until the market returns to
3 normal. Buying prices have never been lower and there are excellent buys
4 available...

4 We are looking for additional investment capital to expand our real estate programs.
5 We are willing to pay [investors] 9% interest on all new loans [*i.e.*, Investments].

5 11. KP represented to offerees and investors that the Investments were often superior to
6 other types of investments such as bank certificates of deposit and company stock. For instance, as
7 explained in a Prospectus dated February 17, 2009, provided by KP to existing or potential "Private
8 Investors:"

9 We are in the greatest buying time of the greater Sun City area due to the bank
10 lender foreclosures.

11 We acquired seven properties (four in Sun City and three in Youngtown) the past
12 two months. We have already remodeled those homes and re-sold four of them. If
13 they do not sell quickly we're holding those homes as re-modeled rentals.

14 We are using nice Travertine flooring, granite countertops, stainless steel appliances
15 and new modern amenities so the renovated homes sell very quickly.

15 We need your help. We are looking for additional investment capital.

16 We are willing to pay [investors] 9% interest on all new loans [*i.e.*, Investments].
17 If you are only getting 1% or 2% in the bank, or seeing your stocks, mutual funds,
18 bonds and annuities dropping in value, please call us to invest your funds.

18 **B. Investment Terms and Documentation**

19 12. KP represented to offerees and investors both verbally and in writing that the
20 Investments would provide them with passive profits equaling seven to ten percent of their
21 principal Investments per year, with interest paid out on a monthly basis and the eventual return of
22 their principal at the conclusion of the Investments.

23 13. The Investments included stated terms ranging from approximately one to seven
24 years. Respondents most often issued and sold Investments with five-year terms. At the
25 conclusion of expired Investments, KP sometimes persuaded investors to accept new Investments
26

1 that incorporated investors' original principal Investments and/or accrued or paper profits (the
2 "Roll-Over" investments).

3 14. The Investments were purchased for varying amounts ranging from, without
4 limitation, \$10,000 up to \$180,000.

5 15. The Investments were primarily documented by promissory notes (the "Note(s)")
6 made and executed by: (a) KP in his individual capacity; (b) both KP and MP in their individual
7 capacities; (c) both KP and MP on behalf of the Trust as its Co-Trustees; and (d) by KP and/or MP
8 on behalf of PE as its owners, officers and directors.

9 16. At all times relevant, KP represented to offerees and investors that the Notes would
10 be adequately "secured" by a lien on the Real Estate purchased by Respondents with investors'
11 money. To perfect these lien interests in favor of investors, KP further represented to offerees and
12 investors that Respondents would draft and execute deeds of trust and assignments of rent
13 ("DOT(s)") to be recorded in the county where the related Real Estate was located.

14 17. Like the Notes, the DOTs were signed by KP and MP in their individual capacities
15 and on behalf of the Trust as its Co-Trustees, and on behalf of PE as its owners, officers and
16 directors.

17 **C. Respondents' Misrepresentations and Omissions**

18 18. KP represented to offerees and investors that the DOTs would create first position
19 liens, and the only lien interests in favor of investors on the Real Estate purchased with their
20 Investment money.

21 19. KP further represented to offerees and investors that the Investments were safe
22 because the fair market value of the secured Real Estate would exceed investors' principal
23 Investments by twenty-five to twenty percent, resulting in a loan Investment to value ratio of
24 seventy-five to eighty percent.

25
26

1 20. Thus, in the event of Respondents' default on their Investment obligations, investors
2 were led to believe that they would be able to recoup all or a vast portion of their principal
3 Investment funds by foreclosing on their Real Estate collateral.

4 21. KP failed to disclose to offerees and investors that KP would often fail to record any
5 DOTs on behalf of Investment investors.² Respondents' failure to timely perfect investors' lien
6 interests in the Real Estate purchased with investors' money by recording the DOTs often resulted
7 in the investors' Investments being unsecured.

8 22. Also unbeknownst to offerees and investors, Respondents sometimes prepared and
9 recorded multiple DOTs relating to a single piece of Real Estate in favor of multiple investors,
10 thereby effectively creating first, second, third and even fourth position lien interests. This
11 practice, coupled with the recent decline in the Real Estate market, resulted in investors'
12 Investments being under-secured and/or effectively unsecured.

13 23. Also unbeknownst to offerees and investors, Respondents sometimes encumbered
14 Real Estate collateral that had purportedly been assigned as security for an investor's Investment
15 by: (a) borrowing money from a bank or hard money lender; and (b) authorizing the bank or lender
16 to record a first position DOT against the Real Estate (the "Commercial Loan Liens"). These
17 Commercial Loan Liens similarly resulted in the investors' Investments being under-secured and/or
18 effectively unsecured.

19 **D. Investment Offering Summary**

20 24. Respondents often issued and sold two or more Investments to a single investor.
21 Based on the foregoing, Respondents issued and sold at least three hundred and forty six (346)
22 separate Investments (*i.e.*, original, additional and Roll-Over investments) totaling approximately
23
24

25 ² In Arizona, the transfer or creation of a legal interest in real property by and between a buyer, seller and/or
26 lender is generally not effective as against others unless the document creating or transferring the legal
interest is "recorded as provided by law in the office of the county recorder of the county in which the
property is located." *See, e.g.*, A.R.S. § 33-411(A).

1 \$19,851,868 to ninety eight (98) investors residing throughout Arizona and seventeen (17) other
2 states.

3 25. Of this amount, approximately: (a) seventy-three of the Investments totaling
4 \$4,199,432 were issued and sold by KP and/or MP in their individual capacities; (b) two hundred
5 and fifty Investments totaling \$14,316,254 were issued and/or sold by the Trust; and (c) twenty-
6 three of the Investments totaling \$1,336,182 were issued and/or sold by PE.

7 26. Respondents' Real Estate business failed, in part, because the value of the Real
8 Estate collateral has plummeted. Respondents have defaulted on the majority of their Investment
9 obligations. Respondents ceased making any Investment payments to investors in or about July
10 2010.

11 27. Many of Respondents' investors are retired or senior citizens who cashed out all or a
12 substantial portion of their pre-existing retirement-based investments and/or life savings to
13 purchase their Investments.

14 28. KP and MP voluntarily filed a Chapter 7 bankruptcy petition in the U.S. Bankruptcy
15 Court, District of Arizona on August 6, 2010 (*See*, Case No. 2:10-bk-24921-CGC).

16 29. KP and MP also caused PE to voluntarily file a Chapter 7 bankruptcy petition in the
17 U.S. Bankruptcy Court, District of Arizona on August 6, 2010 (*See*, Case No. 2:10-bk-24919-RJH).

18 30. The pending bankruptcies were consolidated on August 30, 2010, and are now being
19 jointly administered under the main Case No. 2:10-bk-24921-RJH (the "Bankruptcy(cies)").
20 Respondents' Bankruptcy schedules indicate that their liabilities exceed their assets by millions of
21 dollars.

22 31. Many of Respondents' investors are identified in and/or participating in the
23 Bankruptcies at great and/or additional expense to said investors. As a result of the Bankruptcies,
24 the majority of Respondents' investors only recently received information in the fall of 2010
25 indicating that their Investments are under-secured and/or effectively unsecured for the reasons set
26 forth above.

1 **E. General Investment Allegations**

2 32. Investors provided their Investment money directly to Respondents, who then
3 deposited and commingled Investment funds in common Arizona bank accounts owned and
4 controlled by Respondents (the "Arizona Bank Account(s)") including, without limitation, one
5 repeatedly referred to by Respondents as the "Green Builder Account."

6 33. Respondents caused to be deposited into, or disbursed from the Arizona Bank
7 Accounts, all monies related to Respondents' Real Estate business operations including, without
8 limitation: (a) tenant rent payments; (b) Investment returns (principal and interest); (c) Real Estate
9 construction and development payments; and (d) even the personal funds of KP and MP.

10 34. Respondents prepared and maintained material records of the Investments, although
11 not all of this information was provided to investors. Rather, after investors purchased an
12 Investment, Respondents would send to the investors a letter regarding their "Real Estate
13 Investment" that included their Note, a copy of their often unrecorded DOT, a copy of their
14 investment check, and a receipt acknowledging the investors' Investment purchase.

15 35. Respondents and/or their authorized agents managed the essential elements of the
16 Investments and, without limitation: (a) selected, inspected and evaluated potential Real Estate
17 acquisitions; (b) negotiated the terms and conditions of Real Estate purchases; (c) arranged for and
18 participated in Real Estate escrow closings including, for example, the procurement of title reports
19 and insurance policies; (d) raised capital from Investors, banks and/or hard money lenders to
20 purchase and/or renovate Real Estate; (e) planned and managed the renovation of the Real Estate;
21 (f) calculated the appropriate sales prices or rental rates for Real Estate, in part, by analyzing
22 comparable properties; (g) advertised and marketed the Real Estate to potential buyers and renters;
23 (h) negotiated and executed tenant lease agreements and residential and commercial purchase
24 contracts; and (i) collected Real Estate rent and purchase money, and distributed such funds to
25 investors and/or hard money lenders.

26

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

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

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

7 5. Respondents violated A.R.S. § 44-1991 by:

8 a. Representing to offerees and investors that the Investments would be adequately
9 secured by the Real Estate purchased with their Investment money, while further
10 failing to disclose to them that their Investments would be unsecured because
11 Respondents would fail to record DOTs in favor of investors;

12 b. Representing to offerees and investors that the Investments would be adequately
13 secured by the Real Estate purchased with their Investment money, while further
14 failing to disclose to them that: (1) Respondents would often file multiple DOTs in
15 favor of multiple investors to create multiple lien interests in a single piece of Real
16 Estate, resulting in the investors receiving second, third and fourth position lien
17 interests in their purported Real Estate collateral; and (2) that, as a result, their
18 Investments would be under-secured and/or effectively unsecured;

19 c. Representing to offerees and investors that the Investments were safe, in part,
20 because the fair market value of the Real Estate purchased with their Investment
21 money exceeded the related principal Investments by twenty-five to twenty percent,
22 while further failing to disclose to them that Respondents would often cause
23 multiple DOTs to be filed with respect to a single piece of Real Estate and, as a
24 result, the value of their purported Real Estate collateral would be greatly exceeded
25 by the value of the attached, often multiple investor lien interests; and,
26

1 d. Representing to offerees and investors that the Investments would be adequately
2 secured by a first position DOT that would represent the only lien interest in the
3 Real Estate purchased with investor money, while further failing to disclose to them
4 that Respondents would often cause multiple DOTs to be filed with respect to a
5 single piece of Real Estate including, without limitation, first position Commercial
6 Loan Liens and, as a result, the Investments would be under-secured and/or
7 effectively unsecured.

8 6. KP and MP directly or indirectly controlled PE within the meaning of A.R.S. § 44-
9 1999, and KP and MP are each jointly and severally liable with, and to the same extent as PE for its
10 violations of the anti-fraud provisions of the Securities Act, A.R.S. § 44-1991.

11 7. KP and MP acted for the benefit of their marital community and, pursuant to A.R.S.
12 §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of KP and
13 MP's marital community.

14 **III.**

15 **ORDER**

16 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'
17 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
18 that the following relief is appropriate, in the public interest, and necessary for the protection of
19 investors:

20 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of
21 Respondents' agents, employees, successors and assigns, permanently cease and desist from
22 violating the Securities Act.

23 IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry
24 of Order.

25 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that Respondents, and the
26 marital community of KP and MP, shall jointly and severally pay restitution to the Commission in

1 the principal amount of \$19,851,868. The restitution obligation owed by KP, MP, and the KP and
2 MP marital community under this Order will be paid in full upon the earlier of: (a) payment(s) by
3 KP, MP, and the KP and MP marital community totaling \$19,851,868 plus interest; or (b)
4 payment(s) by any Respondent(s) totaling \$19,851,868 plus interest. The Trust's restitution
5 obligation under this Order will be paid in full upon the earlier of: (a) payment(s) by the Trust
6 totaling \$14,316,254 plus interest; or (b) payment(s) by any Respondent(s) totaling \$19,851,868
7 plus interest. PE's restitution obligation under this Order will be paid in full upon the earlier of: (a)
8 payment(s) by PE totaling \$1,336,182 plus interest; or (b) payment(s) by any Respondent(s)
9 totaling \$19,851,868 plus interest. Payment is due in full on the date of this Order. Payment shall
10 be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the
11 Commission. Any principal amount outstanding shall accrue interest at the rate of 10 percent per
12 annum from the date of this Order until paid in full.

13 The Commission, in its sole discretion, may credit the amount of restitution owed by
14 Respondents with the value of any restitution payments made by them to the Investment investors.
15 Respondents shall provide to the Commission all information and documentation to verify that such
16 restitution has been paid which the Commission, in its sole discretion, may accept or reject.

17 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
18 records of the Commission. Any restitution funds that the Commission cannot disburse because an
19 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
20 investor because the investor is deceased and the Commission cannot reasonably identify and
21 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
22 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
23 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
24 shall be transferred to the general fund of the state of Arizona.

25 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents and the KP
26 and MP marital community shall jointly and severally pay an administrative penalty in the amount

1 of \$250,000. Payment is due in full on the date of this Order. Payment shall be made to the “State
2 of Arizona.” Any amount outstanding shall accrue interest as allowed by law.

3 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
4 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
5 shall be applied to the penalty obligation.

6 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
7 default.³ If any Respondent does not comply with this Order, any outstanding balance may be
8 deemed in default and shall be immediately due and payable.

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25 ³ The Commission acknowledges that KP and MP individually, and PE have filed and are participating in
26 pending, consolidated bankruptcies as noted in “Finding of Fact” paragraphs twenty-nine through thirty-one
above. Any subsequent or future bankruptcy petitions filed by Respondents following a discharge or
dismissal of the above referenced pending bankruptcy proceedings shall be viewed as a default.

1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
2 Commission may bring further legal proceedings against that Respondent, including application to
3 the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order 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
16 Phoenix, this _____ day of _____, 2011.

17
18 _____
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21
22 _____
23 DISSENT

24
25 _____
26 DISSENT

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

29 (MD)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents KENNETH JOSEPH PLEIN ("KP"), MARY KATHRYN PLEIN (a.k.a.
3 "MARY KAY PLEIN") ("MP"), KENNETH JOSEPH PLEIN and MARY KATHRYN PLEIN
4 (a.k.a. "MARY KAY PLEIN"), Co-Trustees of THE PLEIN FAMILY TRUST U/T/A dated
5 DECEMBER 1, 1993 (the "TRUST"), and PLEIN ENTERPRISES INCORPORATED (d.b.a. "TRI-
6 STAR REALTY") ("PE") (collectively "Respondents"), admit the jurisdiction of the Commission
7 over the subject matter of this proceeding. Respondents acknowledge that Respondents have been
8 fully advised of Respondents' right to a hearing to present evidence and call witnesses and
9 Respondents knowingly and voluntarily waive any and all rights to a hearing before the
10 Commission and all other rights otherwise available under Article 11 of the Securities Act and Title
11 14 of the Arizona Administrative Code. Respondents acknowledge that this Order To Cease And
12 Desist, Order For Restitution, Order For Administrative Penalties ("Order") and this Consent To
13 Entry of Order constitutes a valid final order of the Commission.

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

17 3. Respondents acknowledge and agree that this Order is entered into freely and
18 voluntarily and that no promise was made or coercion used to induce such entry.

19 4. Respondents acknowledge that Respondents have been represented by an attorney in
20 this matter, Respondents have reviewed this Order with Respondents' attorney, James P. Kneller,
21 Esq., and Respondents understand all terms it contains. Respondents acknowledge that their
22 attorney has apprised them of their rights regarding any conflicts of interest arising from dual
23 representation. Respondents acknowledge that they have each given their informed consent to such
24 representation.

25 5. Respondents admit only for purposes of this proceeding, and any other
26 administrative or civil proceeding to which the Commission or its authorized agent is a party, the

1 Findings of Fact and Conclusions of Law contained in this Order. Respondents agree that
2 Respondents shall not contest the validity of the Findings of Fact and Conclusions of Law
3 contained in this Order in any present or future proceeding in which the Commission or any other
4 state agency is a party concerning the denial or issuance of any license or registration required by
5 the state to engage in the practice of any business or profession.

6 6. By consenting to the entry of this Order, Respondents agree not to take any action or
7 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
8 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
9 basis. Respondents will undertake steps necessary to assure that all of Respondents' agents and
10 employees understand and comply with this agreement.

11 7. While this Order settles this administrative matter between Respondents and the
12 Commission, Respondents understand that this Order does not preclude the Commission from
13 instituting other administrative or civil proceedings based on violations that are not addressed by
14 this Order.

15 8. Respondents understand that this Order does not preclude the Commission from
16 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
17 that may be related to the matters addressed by this Order.

18 9. Respondents understands that this Order does not preclude any other agency or
19 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
20 proceedings that may be related to matters addressed by this Order.

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

25

26

1 11. Respondents agree that Respondents will not exercise any control over any entity
2 that offers or sells securities or provides investment advisory services within or from Arizona until
3 such time as all restitution and penalties under this Order are paid in full.

4 12. Respondents agree that Respondents will continue to cooperate with the Securities
5 Division including, but not limited to, providing complete and accurate testimony at any hearing in
6 this matter and cooperating with the state of Arizona in any related investigation or any other
7 matters arising from the activities described in this Order.

8 13. KP and MP acknowledge that any restitution or penalties imposed by this Order are
9 obligations of KP and MP in their individual capacities, as well as the KP and MP marital
10 community.

11 14. Respondents consent to the entry of this Order and agree to be fully bound by its
12 terms and conditions.

13 15. Respondents acknowledge and understand that if Respondents fail to comply with
14 the provisions of the Order and this consent, the Commission may bring further legal proceedings
15 against Respondents, including application to the superior court for an order of contempt.

16 16. Respondents understand that default shall render Respondents liable to the
17 Commission for its costs of collection and interest at the maximum legal rate.

18 17. Respondents agree and understand that if Respondents fail to make any payment as
19 required in the Order, any outstanding balance shall be in default and shall be immediately due and
20 payable without notice or demand. Respondents agree and understand that acceptance of any
21 partial or late payment by the Commission is not a waiver of default by the Commission.

22 18. KP and MP represent and acknowledge that at all times relevant: (a) KP and MP
23 have been married and residing together as husband and wife; (b) KP and MP formed, owned and
24 controlled the Trust as its co-trustees; (c) that KP has been the president of PE; and (d) that KP and
25 MP have been authorized by the Trust and PE to enter into this Order for and on behalf of the Trust
26 and PE. KP and MP further represent and acknowledge that in these capacities, KP and MP

1 promoted, controlled and bore responsibility for PE's business and financial affairs, and its investor
2 solicitation activities.

3
4 *Kenneth Joseph Plein*

Kenneth Joseph Plein, spouse of Mary Kathryn Plein (a.k.a. "Mary Kay Plein")

6
7 *Mary Kay Plein*

Mary Kathryn Plein (a.k.a. "Mary Kay Plein"), spouse of Kenneth Joseph Plein

8 CALIFORNIA
9 STATE OF ARIZONA)
10 County of SAN DIEGO) SS

11 SUBSCRIBED AND SWORN TO BEFORE me this 9th day of FEB, 2011.

12
13 Please see attached
14 NOTARY PUBLIC

15 My commission expires:

16 3/15/2011

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On 2-9-11 before me, JOGI RASIK LAL VYAS, Notary Public
(Here insert name and title of the officer)

personally appeared KENNETH JOSEPH PLEIN & MARY KATHRYN PLEIN,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (S)

Corporate Officer _____

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN DIEGO

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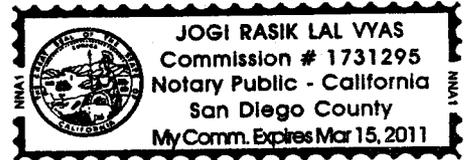
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Handwritten Signature]
 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

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(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

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Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

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State of California

County of SAN DIEGO

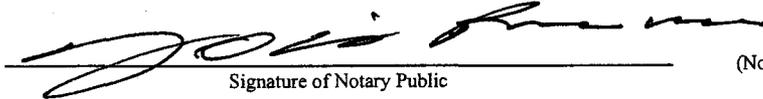
On 2-9-11 before me, JOGI RASIK LAL VYAS, Notary Public
(Here insert name and title of the officer)

personally appeared KENNETH JOSEPH PLEIN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature of Notary Public

(Notary Seal)

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CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

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SERVICE LIST FOR: *In re Kenneth Joseph Plein, et al., S-20774A-10-0494*

James P. Kneller, Esq.
Law Offices of James P. Kneller, P.C.
6900 East Cambelback Road, Suite 250
Scottsdale, Arizona 85251
Attorneys for Respondents
Kenneth Joseph Plein,
Mary Kathryn Plein,
The Plein Family Trust U/T/A
December 1, 1993, and
Plein Enterprises Incorporated