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NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

2011 JUL 18 P 12:29

COMMISSIONERS

- GARY PIERCE, Chairman
- BOB STUMP
- SANDRA D. KENNEDY
- PAUL NEWMAN
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AZ CORP COMMISSION
DOCKET CONTROL

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In the matter of:
 TERRY L. SAMUELS and ELIZABETH SAMUELS, husband and wife,
 JAMES F. CURCIO and JILL L. CURCIO, husband and wife,
 3-CG, LLC, an Arizona limited liability company,
 CHOICE PROPERTY GROUP, LLC, an Arizona limited liability company,
 AZIN INVESTOR GROUP, LLC, an Arizona limited liability company,
 AZIN INVESTOR GROUP II, LLC, an Arizona limited liability company,
 AZIN INVESTOR GROUP III, LLC, an Arizona limited liability company,
 AZIN INVESTOR GROUP IV, LLC, an Arizona limited liability company,
 COMBINED HOLDINGS IV, LLC, an Arizona limited liability company,
 and
 COMBINED HOLDINGS V, LLC, an Arizona limited liability company,
 Respondents.

DOCKET NO. S-20812A-11-0281
NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES, AND ORDER FOR OTHER AFFIRMATIVE ACTION

Arizona Corporation Commission
DOCKETED

JUL 18 2011

DOCKETED BY	<i>MR</i>
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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that Respondents TERRY L. SAMUELS, JAMES F. CURCIO, 3-CG, LLC, CHOICE PROPERTY GROUP, LLC, AZIN INVESTOR GROUP, LLC, AZIN INVESTOR GROUP II, LLC, AZIN INVESTOR GROUP III, LLC, AZIN INVESTOR GROUP IV, LLC, COMBINED HOLDINGS IV, LLC and COMBINED HOLDINGS V, LLC have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).

The Division further alleges that Respondents TERRY L. SAMUELS (“SAMUELS”) and/or JAMES F. CURCIO (“CURCIO”) directly or indirectly controlled all entities listed as Respondents within the meaning of A.R.S. § 44-1999; SAMUELS and/or CURCIO are each jointly and severally liable with, and to the same extent as those entities, for the entities’ violations of the anti-fraud provisions of the 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.
RESPONDENTS

2. SAMUELS; CURCIO; 3-CG, LLC, an Arizona limited liability company; CHOICE PROPERTY GROUP, LLC, an Arizona limited liability company; AZIN INVESTOR GROUP, LLC, an Arizona limited liability company; AZIN INVESTOR GROUP II, LLC, an Arizona limited liability company; AZIN INVESTOR GROUP III, LLC, an Arizona limited liability company; AZIN INVESTOR GROUP IV, LLC, an Arizona limited liability company; COMBINED HOLDINGS IV,

1 LLC, an Arizona limited liability company; and COMBINED HOLDINGS V, LLC, an Arizona
2 limited liability company, may be referred to collectively as “Respondents.”

3 3. ELIZABETH SAMUELS was at all relevant times the spouse of SAMUELS. JILL L.
4 CURCIO was at all relevant times the spouse of CURCIO. (ELIZABETH SAMUELS and JILL L.
5 CURCIO may be collectively referred to as “Respondent Spouses.”) Respondent Spouses are joined
6 in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital
7 communities.

8 4. At all times relevant, Respondents SAMUELS and CURCIO were acting for their own
9 benefit and for the benefit or in furtherance of SAMUELS, CURCIO and Respondent Spouses’
10 respective marital communities.

11 **III.**

12 **FACTS**

13 **Formation of House-Flipping Business, 2003-2005**

14 5. In late 2003, SAMUELS, while working as an independent insurance salesman,
15 began attending seminars held by various motivational speakers, authors and other individuals who
16 represented themselves as experts in real estate. Thereafter, SAMUELS began operating a house-
17 flipping business, i.e. buying, remodeling, reselling and renting residential real estate located in
18 Arizona (the “Business”).

19 6. In 2004, SAMUELS formed several Arizona entities through which to operate the
20 Business.

21 7. In December 2004, CHOICE PROPERTY GROUP, LLC (“CPG”) was formed,
22 with SAMUELS serving as one of the initial managers and members. From its formation and for
23 all the time the Business was in operation, and as further described below, the Business conducted
24 most of its operations through CPG: CPG was the signer on most of the Business’s contracts and
25 the entity that purchased and held title to most of the Business’s properties.
26

1 8. In May 2005, SAMUELS formed 3-CG, LLC, an Arizona limited liability company
2 (“3-CG”), with Samuels as a member and a Samuels-controlled entity as the manager.

3 9. Most of the Business’s communications, including brochures and newsletters to
4 investors, came from 3-CG on 3-CG stationary.

5 10. Although SAMUELS formed additional, shell entities for the purpose of limiting
6 liability, SAMUELS operated the Business’s entities as if they were a single company. For
7 example, SAMUELS and his employees held meetings for the Business as a whole, not for each
8 separate entity. Also, there were no written agreements between the entities.

9 11. SAMUELS was the principal executive: he conducted the Business’s meetings,
10 formed the strategy, determined which properties to purchase, directed the properties’
11 rehabilitation, and sold the properties.

12 **Initial Transactions, 2005-2007**

13 12. In 2005, SAMUELS, primarily through CPG, began acquiring Phoenix-area
14 residential properties. To finance the purchases and reconstruction, SAMUELS and other Business
15 employees, through CPG and 3-CG, solicited and obtained funds from acquaintances, primarily
16 acquaintances from the churches attended by SAMUELS and other Business employees. In
17 general, these early investors were informed as to which property their funds would be used to
18 purchase and/or rehabilitate.

19 13. In exchange for their investment, CPG issued a promissory note to each investor.
20 The notes generally had an annual interest rate of 12-15%.

21 14. Each investor received as collateral an interest in a specific property in the form of a
22 deed of trust (“DOT”) with the investor as the beneficiary and CPG as the trustor.

23 15. The notes and DOTs were not registered as securities with the Commission to be
24 offered or sold within or from Arizona.

25 16. These individual investors were not the Business’s only source of funding.
26 SAMUELS, primarily through CPG, also obtained funds from institutional lenders at interest rates

1 between 15% and 18%. The lenders obtained first-position liens on the properties CPG purchased
2 with these funds.

3 17. Using funds from these early investors and institutional lenders, SAMUELS,
4 primarily through CPG, purchased approximately 20 properties in the Phoenix area.

5 18. Respondents conducted their business in this manner until early 2007.

6 **The AZIN Investors, 2007 to 2010**

7 19. By the end of 2006, CURCIO had joined the Business as its chief financial officer.
8 CURCIO had significant financial expertise and some management experience. CURCIO was
9 acquainted with SAMUELS and familiar with the Business from a previous house-flipping
10 investment with SAMUELS.

11 20. In the spring of 2007, SAMUELS and CURCIO shifted the Business's strategy
12 away from having investors select, invest in and receive as collateral an interest in a specific
13 property in the form of a DOT with the investor as the beneficiary. The new strategy consisted of
14 creating several limited liability companies (LLCs) that served as investor pools of approximately
15 \$1M each. The investors in these LLCs received LLC memberships in exchange for their
16 investments. SAMUELS and CURCIO then pooled the funds received from these investors
17 (collectively referred to as the "AZIN Investors") and transferred the funds to CPG and/or 3-CG.
18 Those entities then used these funds as determined by the Business's managers, i.e. SAMUELS and
19 CURCIO. The AZIN Investors did not participate in the selection of properties or management of
20 the Business.

21 21. SAMUELS and CURCIO began implementing this strategy in April, 2007. At that
22 time, they formed two Arizona limited liability companies: AZIN INVESTOR GROUP, LLC,
23 formed on April 13, 2007, and AZIN INVESTOR GROUP II, LLC, formed on May 1, 2007.
24 (These two entities, together with AZIN INVESTOR GROUP III, formed August 9, 2007, AZIN
25 INVESTMENT GROUP IV, formed October 10, 2007, COMBINED HOLDINGS IV, LLC,
26 formed October 16, 2007, and COMBINED HOLDINGS V, LLC, formed September 23, 2008,

1 each referred to as an "AZIN Entity" and collectively referred to as the "AZIN Entities.")
2 CURCIO was the manager and a member of each AZIN Entity; SAMUELS is a manager of
3 COMBINED HOLDINGS IV and V.

4 22. At or around the time they formed the first two AZIN Entities, SAMUELS and
5 CURCIO began soliciting investors to purchase membership interests in the AZIN Entities (the
6 "Membership Interests"). The Membership Interests were not registered as securities with the
7 Commission to be offered or sold within or from Arizona.

8 23. SAMUELS and CURCIO solicited potential investors, in part, by conducting in-
9 person presentations to small groups of potential investors. These groups ranged in size from one
10 to about ten persons. SAMUELS and CURCIO held these presentations in several states including
11 Arizona, Indiana and New York.

12 24. SAMUELS and CURCIO provided potential investors with detailed brochures and
13 newsletters (each a "Prospectus" and collectively the "Prospectuses") that described the benefits of
14 investing in the Business, current investment opportunities, and the positive opportunities available
15 to Respondents in the Phoenix-area real estate market.

16 25. SAMUELS caused to be prepared one such Prospectus, dated August 2007 and
17 titled "Executive Summary Investment Presentation" (the "Executive Summary"). SAMUELS and
18 CURCIO gave the Executive Summary to several AZIN Investors. The Executive Summary
19 described investing in the Business as becoming an "Investment Partner." The "Investor Benefits"
20 described in the Executive Summary included a representation of "A minimum 15% annualized
21 return." The Executive Summary explained that investors could invest with confidence because
22 "Private funding ensures 3-CG's *[sic]* and its investment partners with the ability to gain the
23 additional advantages needed to purchase appropriate properties, perform the necessary renovations
24 and hold, rent, or sell its real estate holdings."

25 26. It was further explained in the Executive Summary that "Partners enjoy secure
26 ownership/membership of a Limited Liability Company made up of \$1,000,000 of Arizona real

1 estate.” And “Each title is in a combined LLC with 3-CG and the investment LLC[.]” The
2 Executive Summary also stated that 3-CG had access and the ability to purchase properties at prices
3 “well below market value—often times at 40 cents on the dollar.”

4 27. SAMUELS and CURCIO encouraged offerees and investors to re-direct their
5 retirement accounts toward purchasing the Membership Interests. A Prospectus titled “3-CG
6 News; Issue #1 1-2008” provided by SAMUELS and CURCIO to existing and potential investors
7 contained a section written by CURCIO titled “Jim’s Corner.” This section describes how
8 investors could roll over their existing IRA/401k funds to purchase LLC memberships and that
9 funds would be invested in a newly-formed LLC with the investor “listed on ‘Title’ to the
10 properties as security” (quotation marks in original).

11 28. This 2008 Prospectus also included a section written by SAMUELS titled “Terry’s
12 Corner.” The heading for this section states that “2008 promises to be the best real estate year yet!”
13 SAMUELS also states that “This is a phenomenal time to get in and stay in the real estate
14 market....If you anticipate the real estate cycle and know where you are in the cycle based on years
15 of historical data and fellow experienced investor friends, you can make true wealth!” SAMUELS
16 further represented that “No different than Warren Buffet buying companies at discounts, 3-CG
17 buys real estate anywhere from 30-50% of its appraised value.” (From statements such as this one,
18 many investors understood that they were investing in 3-CG, rather than an AZIN Entity, and that
19 3-CG would own the property.)

20 29. These sales pitches to potential investors were very successful. By late 2008,
21 Respondents had acquired over \$5 million from the AZIN Investors. This included approximately
22 18 investors who invested approximately \$1,130,895 in AZIN I; approximately 16 investors who
23 invested approximately \$1,147,952 in AZIN II; approximately 21 investors who invested
24 approximately \$1,057,353 in AZIN III; approximately 18 investors who invested approximately

1 \$1,064,855 in AZIN IV and COMBINED HOLDINGS IV¹; and approximately seven investors in
2 COMBINED HOLDINGS V who invested approximately \$712,431.

3 30. The AZIN Investors purchased the Membership Interests for varying amounts
4 ranging from \$3,580 up to \$163,000.

5 31. The AZIN Entities immediately transferred the investor funds to the Business, with
6 almost all transfers going to CPG. In return, the respective AZIN Entity received an unsecured
7 promissory note from CPG or, on occasion, from another of the Business's entities. These
8 unsecured notes were the AZIN Entities' only assets.

9 32. SAMUELS and CURCIO pooled the AZIN Investor funds and used the pooled
10 funds for the general operations of the Business—paying bills, payroll, and making payments to
11 institutional lenders.

12 33. SAMUELS and CURCIO provided the AZIN Investors with documentation of the
13 Membership Interest purchases in the form of a document titled "Subscription and Acceptance by
14 Member" and an Operating Agreement for the respective AZIN Entity, executed by CURCIO as
15 manager of the appropriate AZIN Entity.

16 34. For all practical purposes, the AZIN Investors had no say in the management of the
17 AZIN Entities. Under the terms of the Operating Agreement, the manager of each entity
18 (CURCIO) had almost absolute control over the entity. Additionally, the AZIN Investors lacked
19 experience in real estate investment and management. Thus, they could not have effectively
20 managed the AZIN Entities even if they had any authority to do so.

21 35. Moreover, the AZIN Entities had absolutely no control over CPG, 3-CG or any
22 aspect of the Business. As a result, the success of the Business—and any hope of distributions to
23 the AZIN Entities and AZIN Investors—depended entirely on SAMUELS's and CURCIO's
24 management and expertise in profitably operating the Business.

25
26 ¹ AZIN IV was a member of COMBINED HOLDINGS IV and all AZIN IV investor funds were
used in COMBINED HOLDINGS IV.

1 **Respondents' Misrepresentations and Omissions**

2 36. While soliciting investors, CURCIO and SAMUELS failed to inform investors of
3 existing obligations and foreclosure proceedings pending against CPG and the Business's related
4 entities. Prior to soliciting the offerees in 2007, SAMUELS, primarily through CPG, had already
5 purchased several properties using funds obtained from investors and institutional lenders. These
6 existing investors and lenders were given first-position DOTs on the properties. CPG had defaulted
7 on many of its loans and several of its lenders had filed notices of trustee's sales on CPG's
8 properties. Thus, CPG's properties were being foreclosed on while SAMUELS and CURCIO were
9 soliciting the AZIN Investors. As SAMUELS and CURCIO raised money from investors in late
10 2007 to early 2008, the notices of trustee's sales were cancelled and several DOTs were released.
11 Upon information and belief, Respondents SAMUELS, CURCIO and CPG used AZIN Investor
12 money to satisfy their preexisting obligations to institutional lenders and other investors.

13 37. SAMUELS and CURCIO greatly exaggerated the size of the Business. The
14 Prospectus titled Executive Summary (described above) stated that "In its first full year of
15 operations, 3-CG accumulated \$18 million in real estate properties." In fact, CPG owned only
16 approximately 20 residential properties. For the \$18 million figure to be true, each property would
17 have to have been worth \$900,000. The highest-end properties the Business owned were worth
18 \$400,000 and there were only a handful of such higher-end properties in the Business's portfolio.

19 38. In the Executive Summary (described above), SAMUELS and CURCIO represented
20 to offerees and investors that the use of "private funds" allowed the Business more flexibility and
21 freedom to hold, sell or rent properties.

22 39. In fact, SAMUELS and CURCIO, primarily through CPG, purchased properties
23 using financing from institutional lenders who often charged interest rates of 15-18%. These
24 institutional lenders held first-position liens on the Business's real property (the "Commercial Loan
25 Liens"). CPG used AZIN Investor funds to pay for these loans—some of which existed and were
26 under threat of foreclosure prior to the investor investing.

1 40. SAMUELS and CURCIO represented to offerees and investors that investors would
2 own an interest in an entity and that that entity would own real property or a security interest in real
3 property. The representation of property ownership can be found in Prospectus statements that
4 SAMUELS caused to be prepared such as “Partners enjoy secure ownership/membership of a
5 Limited Liability Company made up of \$1,000,000 of Arizona real estate” and “Each title is in a
6 combined LLC with 3-CG and the investment LLC[.]”

7 41. In fact, investors received only an LLC membership interest in an AZIN Entity. The
8 AZIN Entities did not own or have any security interest in real property or personal property. The
9 AZIN Entities’ only assets were unsecured promissory notes made by CPG and, on occasion, other
10 Business entities. And, as noted above, the Business’s property was already encumbered by the
11 Commercial Loan Liens. Consequently, even if the AZIN Entities had any lien on the properties,
12 such lien would have been subordinate to the Commercial Loan Liens.

13 42. These first-position Commercial Loan Liens ultimately resulted in the foreclosure of
14 the properties. When SAMUELS and CURCIO could not generate additional investor funds to pay
15 the loans, the Business (primarily CPG) defaulted and the institutional lenders foreclosed, taking
16 title to the properties. The AZIN Investors received nothing.

17 43. SAMUELS further represented to offerees and investors in Prospectuses that the
18 Investments were safe because they were purchasing properties at 40-60% of the properties’
19 appraised value. Thus, investors were led to believe that, in the event of a market downturn,
20 investors would be able to recoup all or a vast portion of their principal investment amount when
21 the company sold the real estate.

22 44. In reality, there was no equity in the properties. As a result, when lenders foreclosed
23 on the Commercial Loan Liens there were no funds available to pay to the Respondents.

24 45. SAMUELS and CURCIO also promised the AZIN Investors a minimum return of
25 15% on their investment. SAMUELS and CURCIO sent AZIN Investors monthly statements
26 showing that the Membership Interests had increased in value. Even with the collapse of the

1 Phoenix real-estate market, these statements showed increases of 15% in 2008 and 2009, and a
2 2.5% increase in 2010. No AZIN Investors ever received any principal or interest payments
3 whatsoever. And CPG has not made a single payment to any AZIN Entity under the promissory
4 notes it issued to the AZIN Entities.

5 46. Respondents have lost all of the Business's properties to foreclosure.

6 **IV.**

7 **VIOLATION OF A.R.S. § 44-1841**

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

9 47. From on or about March, 2005, SAMUELS, 3-CG and CPG offered or sold securities
10 in the form of investment contracts and/or notes within or from Arizona.

11 48. From on or about April, 2007, SAMUELS, CURCIO, 3-CG, CPG and the AZIN
12 Entities offered or sold securities in the form of investment contracts and/or notes within or from
13 Arizona.

14 49. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
15 Securities Act.

16 50. This conduct violates A.R.S. § 44-1841.

17 **V.**

18 **VIOLATION OF A.R.S. § 44-1842**

19 **(Transactions by Unregistered Dealers or Salesmen)**

20 51. Respondents offered or sold securities in the form of investment contracts and/or notes
21 within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the
22 Securities Act.

23 52. This conduct violates A.R.S. § 44-1842.

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VI.

VIOLATION OF A.R.S. § 44-1991

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

53. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

- a) Representing to investors that investor funds would be used to purchase real property when in fact the Business—primarily through CPG, and as directed by SAMUELS and CURCIO—purchased properties with funds from institutional lenders, granted these lenders a first-position security interest in the Business's real property assets, then used investor funds to make payments to these institutional lenders;
- b) Representing to investors that the investors would own an interest in an entity which would own or hold a secured interest in real property when in fact the AZIN Entities in which AZIN Investors purchased memberships did not own or have any security interests in any property;
- c) Failing to inform AZIN Investors of the Business's existing obligations to institutional lenders and the Commercial Loan Liens, and that several of these institutional lenders had initiated foreclosure proceedings against the Business's real-property assets; and
- d) While these foreclosure proceedings were occurring, representing to the AZIN Investors and potential investors that the investors would receive a minimum return of 15%.

1 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be
2 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
3 <http://www.azcc.gov/divisions/hearings/docket.asp>.

4 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
5 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
6 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
7 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
8 Opportunity for Hearing.

9 Persons with a disability may request a reasonable accommodation such as a sign language
10 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
11 Bernal, ADA Coordinator, voice phone number (602) 542-3931, e-mail sabernal@azcc.gov.
12 Requests should be made as early as possible to allow time to arrange the accommodation.
13 Additional information about the administrative action procedure may be found at
14 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

15 **IX.**

16 **ANSWER REQUIREMENT**

17 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
18 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
19 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
20 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
21 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
22 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

23 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
24 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
25 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
26 addressed to Ryan J. Millecam.

