



0000127974

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

2011 AUG -2 A 9:45 Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

AZ CORP COMMISSION
DOCKET CONTROL

AUG 2 2011

DOCKETED BY

In the matter of:
GARY PATRICK DUFFY (CRD #1779786),
an unmarried man,
THE INVESTMENT ADVISORY GROUP,
L.L.C., an Arizona limited liability company,
Respondents.

DOCKET NO. S-20808A-11-0241

NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM

Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached Memorandum and proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties was filed with the Arizona Corporation Commission's Docket Control on August 1, 2011.

Dated: August 2, 2011

By:
William Black
Assistant Chief Counsel of Enforcement
Securities Division

I hereby certify that I have this day served the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

Gary Patrick Duffy
10618 E. Betony Dr.
Scottsdale, Arizona 85255
Respondent

The Investment Advisory Group, L.L.C.
10618 E. Betony Dr.
Scottsdale, Arizona 85255
Respondent

Dated: August 2, 2011

By:
Karen Houle, legal assistant

OPEN MEETING ITEM

8/1/11

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

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

RECEIVED
SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 388-1335
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

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

DATE: August 1, 2011

RE: Gary Patrick Duffy and The Investment Advisory Group
Docket No. S-20808A-11-0241

CC: Ernest G. Johnson, Executive Director

Please find attached a proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties regarding Gary Patrick Duffy and The Investment Advisory Group ("Order"). On June 14, 2011, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing regarding a Proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties against Gary Patrick Duffy and The Investment Advisory Group ("Notice"). On June 30, 2011, Gary Patrick Duffy and The Investment Advisory Group ("Respondents") were served with copies of the Notice. Respondents have each failed to request an administrative hearing or file an Answer within the required time limits.

Gary Patrick Duffy ("Duffy") has been registered in Arizona as a securities salesman with various firms since 1988, most recently with Syndicated Capital, Inc. ("Syndicated"). Duffy is the statutory agent and a member of The Investment Advisory Group ("IAG"). On July 18, 2008, Duffy's registration with the Financial Industry Regulatory Authority (FINRA) was suspended. On July 23, 2008, Syndicated terminated its affiliation with Duffy. Duffy has not been registered as a salesman with any other firm since being terminated by Syndicated. The Order finds that Duffy violated §§ 44-1841 and 44-1842 by offering and selling securities in the form of promissory notes that were neither registered nor exempt from registration while Duffy was neither registered as a dealer or salesman.

The Order also finds that Duffy violated A.R.S. § 44-1991 and that Duffy and IAG violated § 44-3241 by making untrue statements or misleading omissions of material facts. The Order also finds that Duffy and IAG violated A.R.S. § 44-3151 by transacting business in this state as an investment adviser or investment adviser representative while neither licensed nor exempt.

Originator: William Black

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

8 In the matter of)

9 GARY PATRICK DUFFY (CRD)
10 #1779786), an unmarried man,)

11 THE INVESTMENT ADVISORY GROUP,)
12 L.L.C., an Arizona limited liability)
13 company,)

14 Respondents.)

DOCKET NO. S-20808A-11-0241

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, AND ORDER FOR
ADMINISTRATIVE PENALTIES**

**RE: GARY PATRICK DUFFY AND THE
INVESTMENT ADVISORY GROUP, L.L.C.**

14 On June 14, 2011, the Securities Division ("Division") of the Arizona Corporation
15 Commission ("Commission") filed a Notice of Opportunity for Hearing regarding a Proposed
16 Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties against
17 Gary Patrick Duffy and The Investment Advisory Group, L.L.C. ("Notice").

18 On June 30, 2011, Respondents Gary Patrick Duffy and The Investment Advisory Group,
19 L.L.C. were personally served with copies of the Notice. Respondents Gary Patrick Duffy and The
20 Investment Advisory Group, L.L.C. have failed to request an administrative hearing within ten days
21 after receipt of the Notice, pursuant to A.R.S. § 44-1972 and A.A.C. Rule R14-4-306. Respondents
22 Gary Patrick Duffy and The Investment Advisory Group, L.L.C. have each failed to file an Answer
23 within 30 days of service of the Notice, pursuant to A.A.C. Rule R14-4-305.

24 **I. FINDINGS OF FACT**

25 1. At all times relevant, GARY PATRICK DUFFY ("DUFFY") has been an Arizona
26 resident.

1 2. DUFFY has been registered in Arizona as a securities salesman (CRD #1779786) with
2 various firms since 1988, most recently with Syndicated Capital, Inc., (“Syndicated”) CRD #29037,
3 beginning August 6, 2003.

4 3. On July 18, 2008, DUFFY’s registration with the Financial Industry Regulatory
5 Authority (FINRA) was suspended. The suspension arose from DUFFY’s failure to comply with an
6 arbitration award¹ entered against him on August 11, 2006 in the amount of \$34,758.

7 4. On July 23, 2008, Syndicated terminated its affiliation with DUFFY. DUFFY has not
8 been registered as a salesman with any other firm since being terminated by Syndicated.

9 5. THE INVESTMENT ADVISORY GROUP, L.L.C. (“IAG”) was formed in Arizona
10 on July 21, 1999. At all times relevant, IAG maintained a place of business in Phoenix, Arizona.
11 DUFFY is identified as statutory agent and member of IAG.

12 6. DUFFY and IAG may be referred to collectively as “Respondents.”

13 7. In the late 1980s, DUFFY met an Arizona resident (“Client A”) and her husband and
14 became their investment adviser.

15 8. DUFFY’s investment advice to Client A continued after the death of Client A’s
16 husband in 2004. Client A is 89 years old.

17 9. Over the course of approximately 20 years from the late 1980s to 2008, DUFFY
18 sold to Client A investment products such as annuities, mutual funds, life insurance and stock that
19 were offered through various entities with whom DUFFY was associated.

20 10. As a registered securities salesman at the time sales of the various investment
21 products were made to Client A, DUFFY received commission payments.

22 11. In May 2008, DUFFY met with Client A at her Phoenix residence. During the
23 meeting, DUFFY advised Client A that he was moving away from a commission-based
24 compensation structure to a fee-based structure for the rendering of investment advisory services.

25
26 ¹ In the Matter of the Arbitration between: AIG Financial Advisors, Inc., Claimant v. Gary P. Duffy, Respondent, Case
Number: 05-06144.

1 12. According to DUFFY, the formula used to calculate the fee for his investment
2 advisory services would be the same formula used by one of his previous firms and would equal a
3 percentage of the assets held by Client A, including the securities held in Client A's portfolio.

4 13. DUFFY represented to Client A that the fee he was requesting was payment for
5 "financial advice" to be provided by DUFFY to Client A with regard to the assets held in her
6 portfolio that included various securities.

7 14. On May 20, 2008, Client A signed a check payable to IAG in the amount of \$8,200.
8 Other than Client A's signature, DUFFY completed all portions of the check. DUFFY wrote in the
9 memo portion of the check the words "Financial Planning."

10 15. On May 21, 2008, DUFFY endorsed the back of Client A's check and deposited it
11 into a checking account in the name of IAG.

12 16. From May 21, 2008 to April 8, 2010, IAG, through DUFFY, did provide investment
13 advice to Client A related to the securities held in her portfolio and advised her with regard to the
14 appropriateness of various investment opportunities involving securities.

15 17. From May 21, 2008 to April 8, 2010, DUFFY was responsible for managing the
16 investment portfolio of Client A and making recommendations to her as to the advisability of
17 various investment opportunities involving securities.

18 18. DUFFY's management of Client A's investment portfolio included, in part, a
19 recommendation to purchase two investment contracts involving the renovation and resale of two
20 residential properties.

21 19. With regard to the residential properties, DUFFY advised Client A as to the specific
22 properties to be purchased and formulated a plan to renovate the properties for resale. According to
23 DUFFY's plan, Client A would supply the funds to be used to purchase and renovate the real estate
24 while DUFFY would coordinate all other services including the purchases, sales listings and
25 closings on the properties. With regard to the renovation work to be performed on the properties,
26 DUFFY was responsible for hiring contractors to complete any work he did not complete himself.

1 20. Despite being provided with the funds by Client A necessary to complete the
2 renovations on the two properties purchased, DUFFY failed to fully complete the renovations.

3 21. The investment advice provided by DUFFY to Client A was delivered via phone
4 calls, and meetings held between Client A and DUFFY at Client A's residence.

5 22. At all times relevant, IAG was not licensed as an investment adviser.

6 23. Neither DUFFY nor IAG, through DUFFY, informed Client A that IAG was not a
7 licensed investment adviser authorized to accept a fee for providing investment advisory services.

8 24. Neither DUFFY nor IAG, through DUFFY, informed Client A that on July 18, 2008,
9 DUFFY's registration with the Financial Industry Regulatory Authority (FINRA) had been suspended.

10 25. Neither DUFFY nor IAG, through DUFFY, disclosed to Client A DUFFY'S failure
11 to comply with the arbitration award entered against him on August 11, 2006.

12 26. Neither DUFFY nor IAG, through DUFFY, informed Client A that IAG was an
13 entity owned and controlled by DUFFY.

14 **Client B**

15 27. In the late 1980s and around the same time that DUFFY met Client A, DUFFY met
16 another Arizona resident ("Client B") and became her investment adviser. Client B is 79 years old.

17 28. Over the course of approximately 20 years from the late 1980s to at least 2008,
18 DUFFY sold to Client B investment products such as annuities, mutual funds, stocks and life
19 insurance that were offered through various entities by whom DUFFY was employed.

20 29. In or around March 2010, DUFFY approached Client B and requested that she make
21 a personal loan to DUFFY.

22 30. Beginning in April 2010 and continuing through June 2010, Client B made three
23 separate loans to DUFFY totaling \$15,000. Each of the three checks written by Client B were
24 payable to DUFFY, who deposited each of the checks into his personal checking account.

25 31. The three loans made to DUFFY by Client B were documented with separate
26 promissory notes signed by DUFFY.

1 IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-3292, that DUFFY and
2 IAG, and any of their agents, employees, successors and assigns, permanently cease and desist
3 from violating the Securities Act and the Investment Management Act.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that DUFFY pay restitution to
5 the Commission in the principal amount of \$15,000.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3292, that DUFFY and IAG, jointly
7 and severally, pay restitution to the Commission in the principal amount of \$8,200. With regard to
8 DUFFY, this amount shall be in addition to the amount (\$15,000) ordered pursuant to A.R.S. § 44-
9 2032.

10 Payment for restitution is due in full on the date of this Order. Payment shall be made to the
11 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any
12 principal amount outstanding shall accrue pre-judgment interest as allowed by law from the date of
13 purchase to the date judgment is entered at the rate of the lesser of ten percent per annum or at a
14 rate per annum that is equal to one percent plus the prime rate as published by the board of
15 governors of the federal reserve system in statistical release H.15. Any principal amount
16 outstanding shall accrue post-judgment interest as allowed by law from the date judgment is
17 entered at the rate of the lesser of ten percent per annum or at a rate per annum that is equal to one
18 percent plus the prime rate as published by the board of governors of the federal reserve system in
19 statistical release H.15.

20 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
21 records of the Commission. Any restitution funds that the Commission cannot disburse because an
22 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
23 investor because the investor is deceased and the Commission cannot reasonably identify and
24 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
25 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
26

1 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
2 shall be transferred to the general fund of the state of Arizona.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 and § 44-3296, that DUFFY
4 pay an administrative penalty in the amount of \$15,000. Payment is due in full on the date of this
5 Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue
6 interest as allowed by law from the date judgment is entered at the rate of the lesser of ten percent
7 per annum or at a rate per annum that is equal to one percent plus the prime rate as published by the
8 board of governors of the federal reserve system in statistical release H.15.

9 IT IS FURTHER ORDERED, pursuant to § 44-3296, that IAG pay an administrative
10 penalty in the amount of \$5,000. Payment is due in full on the date of this Order. Payment shall be
11 made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law
12 from the date judgment is entered at the rate of the lesser of ten percent per annum or at a rate per
13 annum that is equal to one percent plus the prime rate as published by the board of governors of the
14 federal reserve system in statistical release H.15.

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

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

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

IT IS FURTHER ORDERED that this Order shall become effective immediately.
BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

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

(wwb)

- 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

SERVICE LIST FOR: GARY PATRICK DUFFY AND THE INVESTMENT ADVISORY GROUP, L.L.C.

Gary Patrick Duffy
10618 E. Betony Dr.
Scottsdale, Arizona 85255

The Investment Advisory Group, L.L.C.
10618 E. Betony Dr.
Scottsdale, Arizona 85255