

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

DOCKETED BY nr

In the matter of:
ANDREW C. MENICHINO, a married individual;
INNOVATIVE CONSTRUCTION, INC., a Pennsylvania Corporation,
ATLANTIC LEXUS, LTD., a Turks and Caicos Corporation;
Respondents

DOCKET NO. S-20839A-12-0083

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, FOR RESTITUTION,
AND FOR ADMINISTRATIVE PENALTIES**

**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 Andrew C. Menichino, Innovative Construction, Inc., and Atlantic Lexus, Ltd., 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 also alleges that Andrew C. Menichino is a person controlling Innovative Construction, Inc., and Atlantic Lexus, Ltd., within the meaning of A.R.S. § 44-1999, so that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as Innovative Construction, Inc., and Atlantic Lexus, Ltd., for violations 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.

1 **II.**

2 **RESPONDENTS**

3 2. Andrew C. Menichino (“MENICHINO”) is a Pennsylvania resident.

4 3. Innovative Construction, Inc., (“ICI”) is a Pennsylvania corporation incorporated on or
5 about May 1, 2006. Atlantic Lexus, Ltd., (“ALL”) is a corporation incorporated in the Turks and
6 Caicos Islands, British West Indies. ICI also does business as ALL.

7 4. MENICHINO is a Director of ICI and ALL. ALL and ICI, individually or doing
8 business as ALL, will be referred to as the “Menichino Entity.”

9 5. MENICHINO and the Menichino Entity may be referred to collectively as
10 “Respondents.”

11 **III.**

12 **FACTS**

13 6. Some time prior to February 2008, an Arizona resident (“Mr. Netzel”) met an
14 individual (“Mr. AF”) who discussed an investment that would pay approximately five percent (5%)
15 monthly. Mr. AF is a Canadian resident. The discussions between Mr. Netzel and Mr. AF primarily
16 occurred over the telephone or by e-mail.

17 7. In or around February 2008, Mr. Netzel was introduced to MENICHINO, who stated
18 he was looking for financing or a loan to develop a commercial project located in the state of
19 Pennsylvania.

20 8. The discussions between Mr. Netzel and MENICHINO primarily occurred over the
21 telephone or by e-mail, with Mr. Netzel being located in Arizona at all times relevant.

22 9. MENICHINO and/or Mr. AF represented to Mr. Netzel that MENICHINO owned
23 Uniform Commercial Code “lien judgments and default judgments” (“UCC Liens”) that were worth
24 millions of dollars.

25 10. MENICHINO and/or Mr. AF represented to Mr. Netzel that the UCC Liens would be
26 provided as collateral for the financing or loan to develop a commercial project located in the state of

1 Pennsylvania. Mr. Netzel was also given copies of legal opinion letters that allegedly confirmed the
2 existence and ownership of three valid UCC Liens in the name of or for the benefit of MENICHINO,
3 with values exceeding \$10,000,000.

4 11. MENICHINO stated to Mr. Netzel that the funds would generate a return of five
5 percent a month, with the full principal repaid in one year and twenty days. In addition, profit
6 participation would be possible, whereby an additional amount could be earned based on the profits
7 generated from the Menichino commercial project (hereafter called the "Loan Program").

8 12. MENICHINO asked Mr. Netzel to invest in the Loan Program and subsequently
9 provided Mr. Netzel with various Loan Program documents; although interested, Mr. Netzel did not
10 have sufficient funds to invest in the Loan Program at that time.

11 13. MENICHINO suggested that Mr. Netzel offer the Loan Program to Mr. Netzel's
12 insurance business clients and/or friends.¹

13 14. Mr. AF and/or MENICHINO later informed Mr. Netzel that MENICHINO's offshore
14 company, ALL, would be involved in the Loan Program transaction and that an off shore entity,
15 serving as a "pass-through" vehicle, would have to be created by Mr. Netzel in order that additional
16 tax savings and other business benefits could be realized.

17 15. Mr. Netzel formed an off shore entity in the Turks and Caicos Islands, British West
18 Indies, by the name of Fasio, Ltd ("Fasio"), paid miscellaneous fees to MENICHINO for its creation,
19 and was named its director. Fasio was to operate as a pass-through entity.

20 16. Pursuant to the terms of the Loan Program, MENICHINO would submit principal and
21 interest payments to Fasio and Fasio would remit the payments pro-rata to each investor.

22 17. Mr. Netzel provided information to a total of eight individuals and/or couples (the
23 "investors") regarding the Loan Program.

24 18. These eight investors were insurance clients and/or friends of Mr. Netzel. Six of the
25 eight investors are residents of Arizona.

26

¹ See also Docket No. S-20840A-12-0084.

1 19. Neither Mr. Netzel, Fasio, nor the eight investors, had any management authority,
2 control, decision-making privileges, or voting rights with regard to the Loan Program or the
3 Menichino Entity. As indicated by the investment literature, MENICHINO was to manage all day-to-
4 day operations of the commercial project and Loan Program.

5 20. Each investor executed a document titled "LOAN CONTRACT AND PROFIT
6 ALLOCATION AGREEMENT," which contained the following relevant terms:

7 a) The loan amount was \$50,000;
8 b) The interest rate was five percent (5%) per annum, though it was represented
9 by MENICHINO that it would actually be 5% per month;

10 c) The Menichino Entity was the "Borrower" and that the investors were the
11 "Lenders";

12 d) An additional profit participation of point-zero-five percent (0.05%) of the total
13 loan amount per month could be earned based on the success of the Loan Program;

14 e) Fasio was a pass-through agent that would facilitate the Loan Program
15 transactions;

16 f) Each investor would receive a promissory note from MENICHINO and/or the
17 Menichino Entity to evidence their \$50,000 payment; and

18 g) Notices would be mailed and payments submitted to the investors at their
19 designated address.

20 21. Each investor signed the Loan Contract and Profit Allocation agreement.

21 22. Between July 2008 and September 2008, eight investors entered into the Loan Program
22 for a total of \$400,000, which was remitted to MENICHINO and/or the Menichino Entity, to be used
23 by MENICHINO in the development of his commercial project.

24 23. The investors' initial payments were consolidated by Mr. Netzel, who then wire
25 transferred the \$400,000 from his Arizona-based bank account to MENICHINO and/or the Menichino
26 Entity located in Pennsylvania.

1 24. Contrary to the Loan Contract and Profit Allocation agreement, each investor did not
2 receive a promissory note signed by MENICHINO and/or the Menichino Entity to evidence their
3 \$50,000 payment.

4 25. Instead, on or about October 2, 2008, MENICHINO, on behalf of the Menichino
5 Entity, executed a promissory note in the amount of \$400,000, which promised to pay Fasio the full
6 amount on or before October 14, 2009.

7 26. Beginning December 2008, the monthly interest payments due from MENICHINO or
8 the Menichino Entity ceased being paid.

9 27. On or about February 14, 2009, Mr. Netzel, on behalf of the investors, submitted a
10 demand letter to the Menichino Entity requesting the \$400,000 be returned in full as a result of the
11 missed interest payments and pursuant to the default provisions of the Loan Contract and Profit
12 Allocation Agreement. To date, the \$400,000 remains outstanding.

13 28. In October 2010, Mr. Netzel engaged legal counsel in Pennsylvania to discuss and
14 pursue legal action against MENICHINO. Mr. Netzel also engaged a Pennsylvania investigations
15 company to conduct a background investigation on MENICHINO, which discovered that
16 MENICHINO had a criminal history.

17 29. In fact, MENICHINO had been indicted on forty-six counts of bank fraud and money
18 laundering, and convicted in Michigan and Florida for fourteen counts of bank fraud and for violating
19 terms of his probation, and imprisoned in 1992 and 2003, respectively. In addition, MENICHINO was
20 originally ordered to pay \$5,315,635 in restitution.²

21 30. MENICHINO never disclosed to Mr. Netzel or to the eight investors that he has been
22 convicted and imprisoned for bank fraud or that he was ordered to pay restitution for the same
23 offense.³

24
25
26 ² On April 23, 1993, Mr. Menichino was sentenced to 120 months in prison and three years of supervised release, the term of incarceration to be served consecutively to his two unexpired sentences in the Middle District of Florida.

³ According to Case File No. 92-cr-00093-RHB dated January 18, 2006, in or around 1995, a hearing was conducted to determine the amount Mr. Menichino could pay and the restitution ordered was reduced to \$300,000.

1 31. One of the UCC Lien filings that MENICHINO provided to Mr. Netzel, that alleges to
2 secure a valid lien of greater than \$10,000,000, was filed in 1997 in Michigan and contains the
3 following secured party information: Andrew Menichino 04527-040, P.P.C. Box 33/D-1, Terre
4 Haute, IN 47808.

5 32. According to the Federal Bureau of Prisons public inmate locator search,
6 MENICHINO's prison register number was 04527-040. In addition, inmate mailings for the Terre
7 Haute Federal Correctional Institution are received at the P.O. Box 33, Terre Haute, IN 47808.

8 33. MENICHINO did not disclose to Mr. Netzel or the eight investors that he was in prison
9 during the time of the lien filing.

10 34. The UCC Lien documents also included an "explanation sheet to every new
11 commercial filing bearing the U.S.S.E.C. tracer flag containing the phrase 'A Security (15 USC)'" that
12 included a provision that stated:

13 "Legal Authority: Hebrew/Jewish commercial code-corollary to Exodus 20:16. This
14 Hebrew/Jewish commercial process is the best known commercial process in America. It's
15 prime user is the Internal Revenue Service."

16 35. Michigan's Uniform Commercial Code Act 174 of 1962, which governs commercial
17 transactions, does not include MENICHINO's above cited legal authority as a basis for securing a lien
18 or transaction.

19 36. The notes and/or investment contracts that were the subject of this Loan Program were
20 not registered with the Commission.

21 37. ICI and MENICHINO were not registered as dealers or salesman with the
22 Commission.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

38. From on or about July 2008 to September 2008, Respondents offered or sold securities in the form of investment contracts, within or from Arizona.

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

40. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

41. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

42. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

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

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

a) MENICHINO failed to disclose to Mr. Netzel or the eight investors that he was in prison during the time of the lien filing;

1 service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the
2 request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
3 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
4 Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

16 **IX.**

17 **ANSWER REQUIREMENT**

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

24 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
25 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
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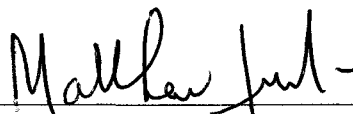
1 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
2 addressed to Phong (Paul) Huynh.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the
4 original signature of the answering respondent or respondent's attorney. A statement of a lack of
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
6 denied shall be considered admitted.

7 When the answering respondent intends in good faith to deny only a part or a qualification
8 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
9 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an
11 Answer for good cause shown.

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13 Dated this 5 day of March, 2012.

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17 Matthew J. Neubert
18 Director of Securities
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