

OPEN MEETING ITEM

3/15/12



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ORIGINAL

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



RECEIVED

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ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

MEMORANDUM

Arizona Corporation Commission

DOCKETED

MAR - 6 2012

DOCKETED BY

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

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

DATE: March 5, 2012

RE: Steven M. Netzel, Docket No. S-20840A-12-0084

CC: Ernest G. Johnson, Executive Director

Please find attached a proposed Order to Cease and Desist, Order for Administrative Penalties, and Consent to Same ("Consent Order") by Steven M. Netzel ("Mr. Netzel"). Mr. Netzel has been licensed by the Arizona Department of Insurance, # 196317, as a health and life producer, and as a variable life and variable annuity producer since March 2005.

In 2008, Mr. Netzel met a Pennsylvania resident who was looking to raise money for a commercial development. The Pennsylvania resident asked Mr. Netzel to invest and to offer the investment opportunity to his insurance clients or friends. Mr. Netzel discussed the investment opportunity with his clients and also setup a business entity to enter into the investment and handle investor payments. Between July 2008 and September 2008, a total of eight (8) individuals/couples invested and six (6) are Arizona residents. The Pennsylvania investment opportunity is an investment contract that was not registered with the Commission. At the time of the offering, Mr. Netzel was not a registered securities salesman with the Commission. Mr. Netzel did not receive a commission for selling the investments to his clients; however, he was to receive an administrative payment of \$200 per investor for reimbursement of expenses.

The Consent Order finds that Mr. Netzel violated A.R.S. §§ 44-1841 and 44-1842 because he offered an unregistered security while unregistered as a salesman. To deter future violations of the Act, the Consent Order requires Mr. Netzel to cease and desist from violating the Securities Act and pay an administrative penalty in the amount of \$10,000. A separate action against the Pennsylvania resident is pending before the Commission in Docket No. S-20839A-12-0083.

Originator: Phong (Paul) Huynh

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 ) DOCKET NO. S-20840A-12-0084  
9 )  
10 STEVEN M. NETZEL (CRD# 2863170), an ) DECISION NO. \_\_\_\_\_  
11 individual, )  
12 Respondent. ) **ORDER TO CEASE AND DESIST, ORDER  
13 FOR ADMINISTRATIVE PENALTIES, AND  
14 CONSENT TO SAME**  
15 ) **BY: STEVEN M. NETZEL**

16 Respondent Steven M. Netzel ("Respondent") elects to permanently waive any right to a  
17 hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et*  
18 *seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Administrative  
19 Penalties, and Consent to Same ("Order"). Respondent admits the jurisdiction of the Arizona  
20 Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact and  
21 Conclusions of Law contained in this Order; and consents to the entry of this Order by the  
22 Commission.

23 **I.**

24 **FINDINGS OF FACT**

- 25 1. Andrew C. Menichino ("Mr. Menichino") is a Pennsylvania resident.
- 26 2. Innovative Construction, Inc., ("ICI") is a Pennsylvania corporation incorporated on or  
about May 1, 2006. Atlantic Lexus, LTD., ("ALL") is a corporation incorporated in the Turks and  
Caicos Islands, British West Indies.
3. Mr. Menichino is a director of ICI and ALL. ICI, individually or doing business as  
ALL, will be referred to as the "Menichino Entity."

1           4.       For all times relevant, Steven M. Netzel ("Mr. Netzel") was an Arizona resident and  
2 operated from an office located in Maricopa County, Arizona.

3           5.       From March 29, 2005, to the present, Mr. Netzel has been licensed by the Arizona  
4 Department of Insurance, # 196317, as a health and life producer, and as a variable life and variable  
5 annuity producer.

6           6.       Since February 23, 2009, Mr. Netzel has been a registered securities salesman with the  
7 Commission, CRD# 2863170. Mr. Netzel has been licensed as an investment advisory representative  
8 with the Commission since February 26, 2009.

9           7.       Some time prior to February 2008, Mr. Netzel met an individual ("Mr. AF") who  
10 discussed an investment that would pay approximately five percent (5%) monthly. Mr. AF is a  
11 Canadian resident. The discussions between Mr. Netzel and Mr. AF primarily occurred over the  
12 telephone or by e-mail.

13           8.       In or around February 2008, Mr. AF introduced Mr. Netzel to Mr. Menichino. Mr.  
14 Menichino stated he was looking for financing or a loan to develop a commercial project located in the  
15 state of Pennsylvania.

16           9.       The discussions between Mr. Netzel and Mr. Menichino primarily occurred over the  
17 telephone or by e-mail.

18           10.      Mr. Menichino and/or Mr. AF represented to Mr. Netzel that Mr. Menichino owned  
19 Uniform Commercial Code lien judgments and default judgments ("UCC Liens") that were worth  
20 millions of dollars.

21           11.      Mr. Menichino and/or Mr. AF represented to Mr. Netzel that the UCC Liens would be  
22 provided as collateral for the financing or loan to develop a commercial project located in the state of  
23 Pennsylvania. Mr. Netzel was also given copies of legal opinion letters that allegedly confirmed the  
24 existence and ownership of three UCC Lien filings, in the name of or for the benefit of Mr. Menichino,  
25 with values exceeding \$10,000,000.

26

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

5           13.     Mr. Menichino asked Mr. Netzel to invest in the Loan Program and subsequently  
6 provided Mr. Netzel with various Loan Program documents; although interested, Mr. Netzel did not  
7 have sufficient funds to invest in the Loan Program at that time.

8           14.     Mr. Menichino suggested that Mr. Netzel offer the Loan Program to Mr. Netzel's  
9 Insurance business clients and/or friends.

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

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

17          17.     Mr. Menichino would submit principal and interest payments to Fasio and Fasio would  
18 remit the payments pro-rata to each investor.

19          18.     Between the periods of July 2008 to September 2008, Mr. Netzel told or otherwise  
20 provided information to a total of eight individuals and/or couples (the "investors") regarding the Loan  
21 Program.

22          19.     These eight investors were insurance clients and/or friends of Mr. Netzel. Six of the  
23 eight investors are residents of Arizona.

24          20.     Neither Mr. Netzel, Fasio, nor the eight investors, had any management authority,  
25 control, decision-making privileges, or voting rights with regard to the Loan Program or the  
26

1 Menichino Entity. As indicated by the literature, Mr. Menichino was to manage all day-to-day  
2 operations of the commercial project and Loan Program.

3 21. Each investor executed a document titled "LOAN CONTRACT AND PROFIT  
4 ALLOCATION AGREEMENT," which contained the following relevant terms:

- 5 a) That the loan amount was \$50,000;
- 6 b) That the interest rate was five percent (5%) per annum, though it was  
7 represented by Mr. Menichino that it would actually be 5% per month;
- 8 c) That the Menichino Entity was the "Borrower" and that the investors were the  
9 "Lenders";
- 10 d) That an additional profit participation of point-zero-five percent (0.05%) of the  
11 total loan amount per month could be earned based on the success of the Loan Program;
- 12 e) That Fasio was a pass-through agent that would facilitate the Loan Program  
13 transactions;
- 14 f) That each investor would receive a promissory note from Mr. Menichino  
15 and/or the Menichino Entity to evidence their \$50,000 payment; and
- 16 g) That notices would be mailed and payments submitted to the investors at their  
17 designated address.

18 22. Each investor signed the Loan Contract and Profit Allocation agreement.

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

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

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

4           26.     Instead, on or about October 2, 2008, Mr. 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           27.     Mr. Netzel did not receive a commission or payment for remitting the \$400,000 to Mr.  
8 Menichino; however, Mr. Netzel was to receive an administrative payment of \$200 per member for  
9 processing and disbursing interest payments to investors, and for taxes and administrative costs  
10 incurred in the creation of Fasio.

11          28.     Beginning December 2008, the monthly interest payments due from Mr. Menichino or  
12 the Menichino Entity ceased.

13          29.     On or about February 14, 2009, Mr. Netzel, on behalf of the investors and Fasio,  
14 submitted a demand letter to the Menichino Entity requesting the \$400,000 be returned in full as a  
15 result of the missed interest payments and pursuant to the default provisions. To date, the \$400,000  
16 remains outstanding.

17          30.     On or about October 2010, Mr. Netzel engaged legal counsel in Pennsylvania to  
18 discuss and pursue legal action against Mr. Menichino. Mr. Netzel also engaged a Pennsylvania  
19 investigations company to conduct a background investigation on Mr. Menichino, which discovered  
20 that Mr. Menichino had a criminal history.

21          31.     In fact, Mr. Menichino had been indicted on forty-six counts of bank fraud and money  
22 laundering, and convicted in Michigan and Florida for fourteen counts of bank fraud and for violating  
23 terms of his probation, and imprisoned in 1992 and 2003, respectively. In addition, Mr. Menichino  
24 was originally ordered to pay \$5,315,635 in restitution.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> This information is derived from Case File No. 92-cr-00093-RHB dated January 18, 2006, from the United States  
District Court for the Western District of Michigan. 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.



**III.**

**ORDER**

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

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

IT IS FURTHER ORDERED that Respondent shall comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent, individually, shall pay an administrative penalty in the amount of \$10,000. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest from the date judgment is entered at the rate of 10 percent per annum.

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

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1 IT IS FURTHER ORDERED that this Order shall become effective immediately.

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

3  
4 CHAIRMAN

COMMISSIONER

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7 COMMISSIONER

COMMISSIONER

COMMISSIONER

8  
9 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
10 Executive Director of the Arizona Corporation  
11 Commission, have hereunto set my hand and caused the  
12 official seal of the Commission to be affixed at the Capitol,  
13 in the City of Phoenix, this \_\_\_\_\_ day  
14 of \_\_\_\_\_, 2012.

15 \_\_\_\_\_  
16 ERNEST G. JOHNSON  
17 EXECUTIVE DIRECTOR

18 \_\_\_\_\_  
19 DISSENT

20 \_\_\_\_\_  
21 DISSENT

22 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA  
23 Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

24 (PTH)

**CONSENT TO ENTRY OF ORDER**

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1. Respondent admits the jurisdiction of the Commission over the subject matter of this proceeding. Respondent acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses and he knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order to Cease and Desist, Order for Administrative Penalties, and Consent to the Same ("Order") constitutes a valid final order of the Commission.

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

3. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent acknowledges that he has been represented by an attorney in this matter, that he has reviewed this Order with his attorney, Jamie Palfai, of the law firm of Baugh, Dalton, Carlson & Ryan, L.L.C., and understands all the terms it contains.

5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order. Respondent agrees that he shall not contest the entry of the Findings of Fact and Conclusions of Law contained in this Order in any present or future proceeding in which the Commission or any other state agency is a party concerning the denial or issuance of any license or registration required by the state to engage in the practice of any business or profession.

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

1           7.     While this Order settles this administrative matter between Respondent and the  
2 Commission, Respondent understands that this Order does not preclude the Commission from  
3 instituting other administrative or civil proceedings based on conduct that is not addressed by this  
4 Order.

5           8.     Respondent understands that this Order does not preclude the Commission from  
6 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
7 that may be related to the matters addressed by this Order.

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

11          10.    Respondent agrees that Respondent will not exercise any control over any entity that  
12 offers or sells securities within or from Arizona until such time as all penalties under this Order are  
13 paid in full.

14          11.    Respondent agrees that Respondent will continue to cooperate with the Securities  
15 Division including, but not limited to, providing complete and accurate testimony at any hearing in  
16 this matter and cooperating with the state of Arizona in any related investigation or any other  
17 matters arising from the activities described in this Order.

18          12.    Respondent acknowledges that any penalties imposed by this Order are obligations  
19 of the Respondent.

20          13.    Respondent consents to the entry of this Order and agrees to be fully bound by its  
21 terms and conditions.

22          14.    Respondent acknowledges and understands that if Respondent fails to comply with  
23 the provisions of the order and this consent, the Commission may bring further legal proceedings  
24 against them, including application to the superior court for an order of contempt.

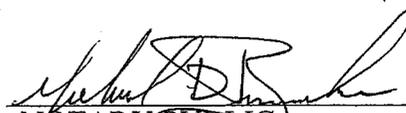
25          15.    Respondent understands that default shall render him liable to the Commission for  
26 its costs of collection and interest at the maximum legal rate.

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Steven M. Netzel

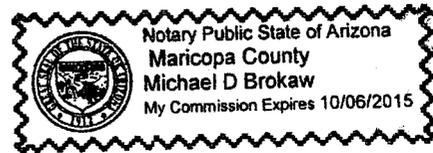
STATE OF ARIZONA        )  
  ) ss  
County of Maricopa        )

SUBSCRIBED AND SWORN TO BEFORE me this 1<sup>st</sup> day of March, 2012,

  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

10-06-15



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Jamie Palfai  
Baugh, Dalton, Carlson & Ryan, L.L.C.  
3200 North Central Avenue, Suite 2300  
Phoenix, AZ 85012  
Attorney for Steven M. Netzel

