

NEW APPLICATION  
ORIGINAL



0000135667

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2012 MAR 30 P 12:46

COMMISSIONERS

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

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of: )  
ALONZO L. RUSSELL, a single man; )  
A. L. RUSSELL & ASSOCIATES LLC, an )  
Arizona limited liability company; )  
RE-STAR LLC, an Arizona limited liability )  
company; )  
RE-STAR HOLDINGS LLC, an Arizona limited )  
liability company; and )  
LINDA RUSSELL, a single woman; )  
Respondents. )

DOCKET NO. S-20518A-12-0120

**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**

**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 ALONZO L. RUSSELL, A. L. RUSSELL & ASSOCIATES LLC, RE-STAR LLC, and RE-STAR HOLDINGS 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") and the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act") and a final Commission order dated July 18, 2007, Commission Decision No. 69706.

Arizona Corporation Commission

**DOCKETED**

**MAR 30 2012**

DOCKETED BY *NR*





1           16.     Consequently, as of April 26, 2006 RUSSELL's investment adviser representative  
2 license was automatically suspended per A.R.S. § 44-3158(B) and RUSSELL's securities  
3 salesman registration was automatically suspended per A.R.S. § 44-1949.

4           17.     At around this same time, the Commission and the Financial Industry Regulatory  
5 Authority (FINRA) (formerly known as the National Association of Securities Dealers), began  
6 investigating RUSSELL. FINRA regulates securities brokers and dealers under the authority of  
7 the U.S. Securities and Exchange Commission.

8           18.     FINRA's investigation resulted in a February 26, 2007 "Letter of Acceptance,  
9 Waiver and Consent" barring RUSSELL from association with any FINRA member in any  
10 capacity.

11           19.     The Commission's investigation resulted in Commission Decision No. 69706 (the  
12 "Order"). In the Order, the Commission found that after receiving the check from the client,  
13 RUSSELL deposited the \$50,000 into his own Bank of America account and used the money at  
14 clothing stores, restaurants and golf courses.

15           20.     The Order documents the Commission's permanent revocation of RUSSELL's  
16 securities salesman registration and investment adviser representative license. It also includes  
17 the Commission's order that RUSSELL permanently cease and desist from selling securities in or  
18 from Arizona without being registered as a dealer or salesman.

19           21.     In the section of the Order titled "Consent to Entry of Order," executed by  
20 RUSSELL, RUSSELL expressly agreed that: (a) he would "not exercise any control over any  
21 entity that offers or sells securities or provides investment advisory services within or from  
22 Arizona at any time in the future"; and (b) he would "not sell any securities in or from Arizona"  
23 and would "not transact business in Arizona as an investment adviser or investment adviser  
24 representative in or from Arizona."

25

26

1           22.     The Order required RUSSELL to pay restitution of \$50,000 and penalties of  
2 \$20,000 plus interest at the rate of 10% per annum respectively accruing from the date of  
3 purchase and the date of the Order.

4           23.     At the time of the Order, RUSSELL paid \$30,000 of damages. He made no  
5 further payments.

6           24.     The remaining \$20,000 of restitution and \$20,000 of penalties, along with accrued  
7 interest, are still outstanding. As noted in the Order, these amounts are to be offset by the  
8 \$6,786.66 "interest" payments made by RUSSELL to the customer.

9     **B. RUSSELL's Continued Provision of Investment Advisory Services**

10          25.     In spite of the Order, RUSSELL continued to advise clients for compensation as  
11 to the value of securities, the advisability of investing, purchasing or selling securities and  
12 providing financial planning services.

13          26.     After AIG and Householder terminated RUSSELL on April 26, 2006, RUSSELL  
14 told his existing investment advisory clients that RUSSELL was leaving AIG due to a dispute  
15 over commissions that AIG supposedly owed to RUSSELL. RUSSELL explained to his clients  
16 that he was going to run his own investment-adviser/consulting business.

17          27.     RUSSELL informed clients that, if they wished to continue using him for  
18 financial services, they could transfer their AIG accounts to accounts held by Fidelity  
19 Investments ("Fidelity").

20          28.     RUSSELL persuaded clients to transfer their investment and retirement accounts  
21 from AIG's custody to Fidelity to be managed by RUSSELL.

22          29.     Beginning in June 2006, and for the next several years, RUSSELL acquired  
23 "limited trading authorization" for 147 Fidelity accounts held by 70 different persons (some of  
24 which were couples or trusts).

25          30.     RUSSELL obtained the limited trading authorization for 30 of these accounts after  
26 the effective date of the Order.

1           31.     The assets in these accounts consisted of mutual funds, stocks, bonds and other  
2 securities.

3           32.     As stated in Fidelity's authorization forms, "Limited trading authorization"  
4 allowed RUSSELL "to inquire in, trade, buy, sell (including short sales), exchange, convert,  
5 tender, trade or otherwise acquire or dispose of stocks, bonds, securities, and other investments,  
6 on margin or otherwise, including the purchase and/or sale of option contracts, for and at [the  
7 account holder's] risk."

8           33.     RUSSELL used this authorization to, among other things, invest his clients' funds  
9 in the above-described securities and control the purchase and sale orders of securities in each  
10 client's Fidelity account(s).

11           34.     As an integral part of RUSSELL's business, RUSSELL and ALRA would send  
12 each client quarterly invoices on ALRA stationary. The invoices were labeled "Financial  
13 Planning Service Fee Invoice."

14           35.     Each invoice displayed the value of that respective client's asset portfolio under  
15 RUSSELL's management.

16           36.     The invoices also included the fees RUSSELL charged his clients for the  
17 investment advisory services he provided.

18           37.     The compensation that a client paid to RUSSELL consisted of a quarterly fee  
19 equal to one quarter of one percent (0.25%) of the value of the total assets that RUSSELL  
20 managed for the client; for total annual compensation of 1% of the value of the assets over which  
21 RUSSELL had trading authority.

22           38.     The asset value used in the invoices was the value of the assets at the beginning of  
23 the respective quarter.

24           39.     The invoices included instructions telling clients they could pay by check, credit  
25 card or account bill pay.

26

1           40.     In 2006 and 2007, invoices instructed clients to make the payments to “General  
2 Administration and Accounting, LLC, our accounting firm”; this entity is a manager-managed  
3 Arizona limited liability company managed by RUSSELL. By 2008, the invoices instructed  
4 clients to make the payments to ALRA.

5           41.     For the period beginning June 2006 and ending December 2010 (when Fidelity  
6 removed RUSSELL’s trading authorization from client accounts), RUSSELL billed clients for  
7 managing the clients’ Fidelity accounts a total of at least \$530,525.

8           42.     RUSSELL also billed 19 persons—18 of whom were his investment advisory  
9 clients—a management fee for the value of each client’s investment in RUSSELL’s house-resale  
10 business (described in more detail below). These 19 persons purchased membership interests in  
11 RE-STAR and RS HOLDINGS (the “Membership Interests”).

12           43.     There was no written agreement between these 19 persons to pay RUSSELL or  
13 ALRA a commission for “management” of the Membership Interests. Rather, the only payment  
14 terms disclosed to Membership Interest holders were contained in RE-STAR’s operating  
15 agreement, which described a fixed compensation that RE-STAR (not the company members)  
16 would pay to the manager(s).

17           44.     Under RE-STAR’s operating agreement, RE-STAR members were not required to  
18 make additional capital contributions. In spite of this, RUSSELL and ALRA charged each  
19 Membership Interest holder a quarterly management fee of .25% of the value of that person’s  
20 Membership Interest.

21           45.     This fee was billed on invoices that ALRA sent to the Re-Star Investors; the Re-  
22 Star Investors’ quarterly payments went to ALRA, not RE-STAR.

23           46.     For the 18 Re-Star Investors who were also RUSSELL/ALRA clients, the  
24 quarterly invoices that ALRA sent to these 18 Re-Star Investors for RUSSELL’s advisory  
25 services showed the value of the Membership Interest along with the value of the other accounts  
26

1 managed by RUSSELL. And the fee for management of the Membership Interest was included  
2 in the total fee due for all services provided by RUSSELL and ALRA.

3 47. For the eight-quarter period beginning July 1, 2009 and ending March 31, 2011  
4 RUSSELL billed clients for managing the client's Membership Interests in RE-STAR a total of  
5 at least \$31,045.

6 **C. Material Omissions and Misrepresentations in the Provision of Investment Advisory**  
7 **Services**

8 48. RUSSELL did not truthfully inform his existing clients of the conduct giving rise  
9 to his termination from AIG and Householder and the FINRA and Commission proceedings  
10 against RUSSELL as set forth in the Order.

11 49. Rather, RUSSELL told clients that he left AIG due to a dispute over commissions  
12 with AIG.

13 50. RUSSELL did not inform clients that ALRA was not a licensed investment  
14 adviser and that, after his termination from Householder, RUSSELL was not a licensed  
15 investment adviser representative and he was not associated with a licensed investment adviser.

16 51. RUSSELL did not inform his existing clients of the FINRA action barring  
17 RUSSELL from association with FINRA members.

18 52. RUSSELL did not inform his existing clients of the Order.

19 53. RUSSELL also acquired clients after the FINRA action and after the Commission  
20 issued its Order. RUSSELL did not inform these clients of the FINRA action or the Order prior  
21 to entering into an agreement to provide investment advisory services for these clients.

22 54. RUSSELL and ALRA charged clients a management fee after RUSSELL was  
23 suspended from transacting investment advisory business and continued providing investment  
24 advisory services for compensation after the Order expressly barred him from transacting  
25 business as an investment adviser or investment adviser representative.

26



1           55.     RUSSELL did not disclose to the 18 Re-Star Investors who were also investment  
2 advisory clients the commission payment structure for management of each client's Membership  
3 Interest, much less any conflicts of interest created by such commission payment structure.

4           56.     This commission consisted of RUSSELL charging the Re-Star Investors quarterly  
5 management fees for managing the Membership Interests equal to .25% of the value of the  
6 Membership Interests. RUSSELL was responsible for determining the value of the Membership  
7 Interests reported by RUSSELL to the Re-Star Investors. These values, as shown in invoices  
8 sent to Re-Star Investors and the Valuation Statement (described below), showed the principal  
9 value of the Membership Interests increased by 11-17.7% in 2009 (before the business had sold a  
10 single property) and by 14-19% in 2010.

11           57.     These reported value increases, in turn, determined RUSSELL's management fee  
12 for the Membership Interests. As a result, RUSSELL had an economic incentive to overstate the  
13 value of the Membership Interests.

14           58.     RUSSELL did not inform his clients who were RE-STAR Investors of the conflict  
15 of interest created by this commission payment.

16     **D. Sale of LLC Membership Interests**

17           59.     Beginning in early 2009, RUSSELL approached several of his existing clients  
18 about investing in a house-flipping venture—i.e. purchasing, rehabilitating and selling residential  
19 properties. The venture would be managed by RUSSELL.

20           60.     To raise a pool of capital to fund his house-flipping business, RUSSELL sold the  
21 Membership Interests within and from Arizona.

22           61.     By July 2009, 19 persons—18 of whom were existing clients—had invested  
23 \$1,430,000 by purchasing Membership Interests in RE-STAR and RS HOLDINGS (these 19  
24 persons, the "Re-Star Investors").

25           62.     In exchange for their investment, RUSSELL prepared and caused to be provided  
26 to Re-Star Investors an operating agreement titled "Re-Star Operating Agreement" dated

1 February 1, 2009 (the "Operating Agreement"). The Operating Agreement vested exclusive  
2 authority to manage the business in the Manager, i.e., RUSSELL.

3 63. RUSSELL controlled RE-STAR, RS HOLDINGS and their business. The Re-  
4 Star Investors did not participate in the business and the Re-Star Investors depended on the  
5 efforts of RUSSELL to make the house-flipping business successful and to realize a return on  
6 their investments.

7 64. RUSSELL selected the properties to be purchased and rehabilitated, controlled the  
8 rehabilitation, and controlled the sale of the properties.

9 65. From April 24 through July 29, 2011, RE-STAR and its related entity, Re-Star  
10 Properties, purchased seven properties—six in Maricopa County and one in Pinal County.

11 66. To purchase these properties and conduct its business, RE-STAR pooled investor  
12 funds. Five Re-Star Investors invested amounts that were insufficient to purchase even the  
13 lowest-priced home purchased by RE-STAR in 2009, with a purchase price of \$42,500.  
14 Additionally, no single investor invested enough to purchase the two homes with the highest  
15 purchase prices: \$160,125 and \$204,750.

16 67. In early 2010, RUSSELL provided Re-Star Investors with a document containing  
17 a valuation of Membership Interests for the fourth quarter of 2009 showing a 17.7% increase in  
18 value of the Membership Interests.

19 68. Additionally, in the invoices sent to clients for RUSSELL's management fee of  
20 the Membership Interests, RUSSELL showed increases in value that varied from 11% to 19%.

21 69. Other than these purported increases, no RE-STAR Investors have realized an  
22 increase in value on their Membership Interests.

23 70. Only one RE-STAR Investor, after hiring an attorney and threatening to sue,  
24 received a return of a \$125,000 investment.

25 71. No other Re-Star Investors have received any returns on their investment.  
26

1           72.     At present, the business does not own any properties and does not appear to be  
2 operational.

3 **E. Material Misstatements and Misrepresentations in the Offer and Sale of the**  
4 **Membership Interests**

5           73.     In obtaining investor funds, RUSSELL failed to disclose the Commission's Order  
6 to the Re-Star Investors.

7           74.     RUSSELL also failed to disclose the conduct leading to his termination from  
8 Householder and AIG.

9           75.     As found in the Order, the conduct leading to RUSSELL's termination involved  
10 dishonesty and misappropriation of client funds.

11           76.     In the Operating Agreement, RE-STAR's would pay RE-STAR's managers  
12 salaries and compensation fixed by the managers, "as long as such compensation is fair and  
13 reasonable for the duties performed." Neither the Operating Agreement, nor any other document  
14 given to the Re-Star Investors, required any additional capital contributions from members,  
15 required members to pay the managers, or disclosed any commission payments based on the  
16 value of the Membership Interests.

17           77.     In spite of this, RUSSELL and ALRA billed Re-Star Investors for a quarterly  
18 commission equal to .25% of the Membership Interests value; the Re-Star Investors paid these  
19 fees to ALRA.

20           78.     RUSSELL was responsible for determining the reported value of the Membership  
21 Interests and had an economic incentive to overstate the value. RUSSELL failed to disclose this  
22 method of payment and the conflict of interest created by it.

1 IV.

2 VIOLATION OF A.R.S. § 44-3151

3 (Transactions by Unlicensed Investment Advisers

4 or Investment Adviser Representatives)

5 [RUSSELL and ALRA]

6 79. Respondents RUSSELL and ALRA transacted business in Arizona as investment  
7 advisers or investment adviser representatives while not licensed or in compliance with Article 4 of the  
8 IM Act.

9 80. This conduct violates A.R.S. § 44-3151.

10 V.

11 VIOLATION OF A.R.S. § 44-3241

12 (Fraud in the Provision of Investment Advisory Services)

13 [RUSSELL and ALRA]

14 81. Respondents RUSSELL and ALRA engaged in a transaction or transactions within  
15 or from Arizona involving the provision of investment advisory services in which Respondents,  
16 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue  
17 statements of material fact or omitted to state material facts that were necessary in order to make the  
18 statements made not misleading in light of the circumstances under which they were made; (iii)  
19 misrepresented professional qualifications with the intent that the client rely on the  
20 misrepresentation; or (iv) engaged in transactions, practices, or courses of business that operated or  
21 would operate as a fraud or deceit. Respondents' conduct includes, but is not limited to, the  
22 following:

23 a) Violating A.C.C. R14-6-209 by failing to disclose to clients or prospective  
24 clients the Order and the FINRA order against Russell; and

25 b) Failing to make the statement that RUSSELL was receiving fixed salary  
26 and compensation from RE-STAR for managing the Membership Interests not misleading

1 by omitting to inform clients who were Re-Star Investors that RUSSELL and ALRA were  
2 receiving quarterly commission payments equal to .25% of the value of the Membership  
3 Interests from Re-Star Investors. RUSSELL further failed to disclose the conflict of  
4 interest created by his responsibility to determine the value of the Membership Interests  
5 and his economic incentive to overstate the value of the Membership Interests.

6 82. This conduct violates A.R.S. § 44-3241.

7 **VI.**

8 **VIOLATION OF A.R.S. § 44-1841**

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

10 **[RUSSELL, RE-STAR and RS HOLDINGS]**

11 83. From on or about March 3, 2009, Respondents RUSSELL, RE-STAR and RS  
12 HOLDINGS offered or sold securities in the form of investment contracts, within or from Arizona.

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

15 85. This conduct violates A.R.S. § 44-1841.

16 **VII.**

17 **VIOLATION OF A.R.S. § 44-1842**

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

19 **[RUSSELL, RE-STAR and RS HOLDINGS]**

20 86. Respondents RUSSELL, RE-STAR and RS HOLDINGS offered or sold securities  
21 within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the  
22 Securities Act.

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

**VIII.**

**VIOLATION OF A.R.S. § 44-1991**

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

**[RUSSELL, RE-STAR and RS HOLDINGS]**

88. In connection with the offer or sale of securities within or from Arizona, Respondents RUSSELL, RE-STAR and RS HOLDINGS 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) Failure to disclose FINRA's and the Commission's actions against RUSSELL;
- b) Failure to disclose that RUSSELL had been barred from selling securities and the conditions leading to his bar; and
- c) Failure to disclose that Re-Star Investors would pay commission payments to RUSSELL and ALRA equal to .25% of the reported value of the Membership Interests.

89. This conduct violates A.R.S. § 44-1991.

90. RUSSELL directly or indirectly controlled Respondents RE-STAR and RS HOLDINGS within the meaning of A.R.S. § 44-1999. As a result, RUSSELL is jointly and severally liable with, and to the same extent as these entities for their violations of the anti-fraud provisions of the Securities Act set forth above.

**IX.**

**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief:



1 Commission may, without a hearing, enter an order granting the relief requested by the Division in  
2 this Notice of Opportunity for Hearing.

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

9 **XI.**

10 **ANSWER REQUIREMENT**

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

17 Additionally, the answering respondent must serve the Answer upon the Division.  
18 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
19 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
20 Arizona, 85007, addressed to Ryan J. Millecam.

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

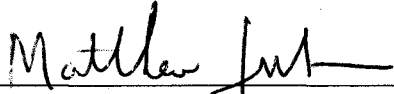


1           When the answering respondent intends in good faith to deny only a part or a qualification  
2 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
3 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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

6           Dated this 30<sup>th</sup> day of March, 2012.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

  
\_\_\_\_\_  
Matthew J. Neubert  
Director of Securities