

OPEN MEETING ITEM

7/18-19/12



0000136610

ORIGINAL

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

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



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

Arizona Corporation Commission
DOCKETED
 JUL - 6 2012

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

DATE: June 28, 2012

RE: Beverly M. West and Ross West, husband and wife
 Docket No. S-20806A-11-0234

CC: Ernest G. Johnson, Executive Director

RECEIVED
 2012 JUL - 6 A 9:28
 AZ CORP COMMISSION
 DOCKET CONTROL

DOCKETED BY	<i>MJN</i>
-------------	------------

Please find attached a proposed Order to Cease and Desist, For Restitution, For Administrative Penalties, and Consent to Same by Beverly M. West ("Mrs. West") and Ross West ("Consent Order"). Ross West was joined, pursuant to A.R.S. §44-2031(C), solely for the purposes of determining the liability of the marital community.

In 2007, Mrs. West met an individual by the name of Miko Wady ("Mr. Wady"). Mr. Wady touted that he arranged the funding for the production of concerts for many well-known singers, that investors could fund these concerts through Mr. Wady, that the net ticket sales would then be paid to Mr. Wady, and that investors would make a return of 25% from the ticket sales (the "Concert Investment"). Thereafter, Mrs. West sold the Concert Investment to five individuals and raised \$50,000. The Concert Investments were unregistered securities and Mrs. West was unregistered as a dealer or salesman with the Commission.

The Consent Order finds that Mrs. West violated A.R.S. §§44-1841 and 44-1842 by selling an unregistered security while being unregistered as a salesman. The Consent Order requires the individuals to cease and desist from violating the Securities Act, pay restitution in the principal amount of \$50,000 and pay an administrative penalty in the amount of \$7,500.

Originator: Paul Huynh

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

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of	}	DOCKET NO. S-20806A-11-0234
BEVERLY MICHELE WEST and ROSS WEST, wife and husband,	}	DECISION NO. _____
Respondents.	}	ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME
	}	BY: RESPONDENTS BEVERLY MICHELE WEST AND ROSS WEST

Respondents BEVERLY MICHELE WEST and ROSS WEST ("Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I. NATURE OF THE CASE

From at least 2004, Miko D. Wady ("WADY") and NATO Enterprises, LLC ("NATO") offered and sold unregistered investment contracts in connection with the production of concerts ("Concert Investment").¹ WADY represented to investors that he arranged the funding for the production of concerts nationwide for such artists as Keith Urban, Carrie Underwood, Radiohead,

¹ This information is taken from the criminal plea agreement filed on November 14, 2011, in CR-09-1485-PHX-JAT in United States of America v. Miko Dion Wady.

1 the Dave Matthews Band, the Foo Fighters, 50 Cent, and R. Kelly.² WADY further represented to
2 investors that funding these concerts would be profitable and that enough money would be raised from
3 concert ticket sales to repay principal investment and generate a profit of at least 25 percent.

4 WADY represented to investors that NATO and investors would share in the profit from the
5 ticket sales after investor's principal investment had been repaid. The profit-sharing is described in
6 Joint Venture Agreements that identify the concerts to be funded by an investor and that state the
7 total amount of money required to produce each concert ("Event Cost").

8 WADY represented to the investors that he had a relationship with a "broker" who was to
9 furnish the services of the artists at the concerts. WADY further represented that the production of
10 each concert would be funded by the investors entering into a Performance Agreement with the
11 broker and the investors paying the producer of the concerts.

12 After forwarding its investment funds to the producer, investors had no duties to perform or
13 responsibilities to fulfill in order to receive its promised profit. The Performance Agreements state,
14 among other things, that "the producer shall have exclusive control over the production...of the
15 [concert]..." WADY represented to investors that the broker and producer, both of whom the
16 investors never met, would produce the concerts, receive the money raised from ticket sales, repay the
17 investors' principal investment, and account for/pay the investors' their profit based on "audit sheets"
18 that purport to show the number of tickets sold and amount of money raised from a concert.

19 II. FINDINGS OF FACT

20 1. At all times relevant, BEVERLY MICHELE WEST was an Arizona resident residing
21 in Gilbert, Arizona and may be referred to as "Respondent" or "WEST."

22 2. In 2007, WEST met WADY during a commercial construction business transaction.
23 Sometime thereafter, WADY told WEST about the Concert Investments and asked her to invest,
24 which she did.

25
26

²The following facts contained in this section were made by the Commission in Decision 71600.

1 3. WADY submitted an audit sheet to WEST that represented to WEST that she had
2 obtained a double digit profit from her Concert Investment.

3 4. Thereafter, WEST offered the Concert Investment, also represented to be a joint
4 venture interest, to her family and friends ("investors").

5 5. WEST described to investors WADY's experience and contacts in the area of
6 concert promotion and music entertainment.

7 6. WEST represented to investors that NATO, not investors, would manage the
8 relationship with the individuals and entities responsible for promotion and production of the
9 concerts, send the investors' monies to the producers of the concerts, receive from the concert
10 producers the monies raised from ticket sales, repay the investors' principal, and account for and
11 pay out profits based on "audit sheets" that purported to show the number of tickets sold and
12 amount of money raised from a concert.

13 7. WEST represented to investors that their funds would be combined with the funds of
14 other investors and forwarded to NATO. In some instances, investors were directed by WEST to
15 forward their funds directly to NATO.

16 8. In exchange for investors' funds, WEST presented investors with a document titled
17 "Joint Venture Agreement" ("Agreement"). The parties to the Agreement were investor(s) and
18 NATO. In some instances, investors were advised by WEST to form limited liability companies
19 for the purpose of making the investment with NATO.

20 9. Each Agreement identifies the following: a) the concert for which the investor(s)
21 was providing the funding; b) the total amount of money required to produce the concert; c) the
22 amount of money invested by the investor(s); d) the funds being invested were to be deposited into
23 a common account; e) NATO shall have the responsibility and authority to manage the funds,
24 including the accounting, use and distribution of the investor(s) funds; and f) the investor(s) shall
25 receive a minimum of 30% of the profit generated from the event within 10 days of the receipt of
26 the proceeds into the common account from the event.

1 10. The Agreement purports to outline the "Powers and Duties of the Parties." In this
2 regard, the Agreement sets forth that NATO shall act as the Manager of the event and shall, with
3 the prior written consent of any other party to the Agreement, have certain powers and duties
4 outlined in the Agreement. In reality, NATO never sought the consent of investors before
5 performing any of the powers and duties outlined in the Agreement. Instead, NATO, through
6 WADY, did not provide investors with opportunities to exercise any meaningful venture powers
7 because NATO, through WADY, made all decisions related to the underlying investment involving
8 the promotion and production of concerts and other events.

9 11. Investors had no significant knowledge related to the concert promotion business
10 and did not possess the requisite business knowledge and experience to select an appropriate
11 managing venturer to replace NATO.

12 12. As a result, the investors were entirely dependent upon the alleged expertise of
13 WADY and his unique, specialized knowledge with the regard to the concert promotion business
14 and were unable to effectively exercise any of the managerial powers and authority allegedly
15 conferred upon them as set forth in the Agreements.

16 13. WEST represented to investors that NATO and/or WADY, upon the occurrence of
17 the concert or other event being promoted, would pay the amounts set forth in the Agreement to
18 WEST who would then make immediate distributions to investors of their principal investment
19 amounts and promised profits.

20 14. All of the alleged concert dates came to pass and, although WEST received audit
21 sheets from WADY purporting to show the number of tickets sold and amount of money raised
22 from a concert, the investors have not received their promised profits or a return of their principal
23 investment amounts.

24 15. At all times relevant, WEST was not registered as a securities dealer or salesman.
25
26

1 controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of
2 10 percent per annum from the date of purchase until paid in full. Interest in the amount of
3 \$22,828.77 has accrued from the date of purchase to July 1, 2012. WEST shall be given credit in
4 the amount of \$4,722.29 for payments made to investors.

5 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
6 records of the Commission. Any restitution funds that the Commission cannot disburse because an
7 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
8 investor because the investor is deceased and the Commission cannot reasonably identify and
9 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
10 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
11 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
12 shall be transferred to the general fund of the state of Arizona.

13 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that Respondent WEST and the
14 marital community of WEST and ROSS WEST, jointly and severally shall pay an administrative
15 penalty in the amount of \$7,500. Payment is due in full on the date of this Order. Payment shall be
16 made to the "State of Arizona." Any amount outstanding shall accrue interest from the date
17 judgment is entered at the rate of 10 percent per annum.

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

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

24
25
26

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

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

3
4
5 CHAIRMAN

COMMISSIONER

6
7 COMMISSIONER

COMMISSIONER

COMMISSIONER

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

14
15 _____
16 ERNEST G. JOHNSON
17 EXECUTIVE DIRECTOR

18
19 _____
20 DISSENT

21
22 _____
23 DISSENT

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

26 (PTH)

CONSENT TO ENTRY OF ORDER

1
2 1. BEVERLY MICHELE WEST (“WEST”) and ROSS WEST (“Respondent
3 Spouse”), who may be referred to collectively as “Respondents,” admit the jurisdiction of the
4 Commission over the subject matter of this proceeding. Respondents acknowledge that they have
5 been fully advised of their right to a hearing to present evidence and call witnesses and they
6 knowingly and voluntarily waive any and all rights to a hearing before the Commission and all
7 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
8 Administrative Code. Respondents acknowledge that this Order To Cease And Desist, Order for
9 Restitution, Order for Administrative Penalties and Consent to Same (“Order”) constitutes a valid
10 final order of the Commission.

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

14 3. Respondents acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. Respondents have been represented by an attorney in this matter. Respondents have
17 reviewed this order with their attorney, Hubert E. Kelly, and understand all terms it contains.
18 Respondents acknowledge that their attorney has apprised them of their rights regarding any
19 conflicts of interest arising from dual representation. Respondents acknowledge that they have
20 each given their informed consent to such representation.

21 5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law
22 contained in this Order. Respondents agree that they shall not contest the validity of the Findings
23 of Fact and Conclusions of Law contained in this Order in any present or future proceeding in
24 which the Commission or any other state agency is a party concerning the denial or issuance of any
25 license or registration required by the state to engage in the practice of any business or profession.
26

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

6 7. While this Order settles this administrative matter between Respondents and the
7 Commission, Respondents understand that this Order does not preclude the Commission from
8 instituting other administrative or civil proceedings based on violations that are not addressed by
9 this Order.

10 8. Respondents understand that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. Respondents understand that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. Respondent WEST agrees that she will not apply to the state of Arizona for
17 registration as a securities dealer or salesman or for licensure as an investment adviser or
18 investment adviser representative until such time as all restitution and penalties under this Order are
19 paid in full.

20 11. Respondent WEST agrees that she will not exercise any control over any entity that
21 offers or sells securities or provides investment advisory services within or from Arizona until such
22 time as all restitution and penalties under this Order are paid in full.

23 12. Respondents agree that they will continue to cooperate with the Securities Division
24 including, but not limited to, providing complete and accurate testimony at any hearing in this
25 matter and cooperating with the state of Arizona in any related investigation or any other matters
26 arising from the activities described in this Order.

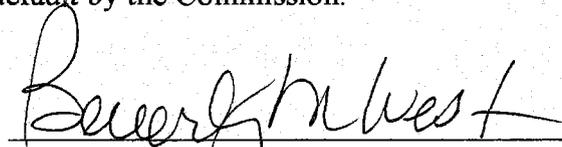
1 13. Respondent WEST and Respondent Spouse acknowledge that any restitution or
2 penalties imposed by this Order are obligations of Respondent WEST as well as the marital
3 community.

4 14. Respondents consent to the entry of this Order and agree to be fully bound by its
5 terms and conditions.

6 15. Respondents acknowledge and understand that if they fail to comply with the
7 provisions of the order and this consent, the Commission may bring further legal proceedings
8 against them, including application to the superior court for an order of contempt.

9 16. Respondents understand that default shall render them liable to the Commission for
10 its costs of collection and interest at the maximum legal rate.

11 17. Respondents agree and understand that if they fail to make any payment as required
12 in the Order, any outstanding balance shall be in default and shall be immediately due and payable
13 without notice or demand. Respondents agree and understand that acceptance of any partial or late
14 payment by the Commission is not a waiver of default by the Commission.

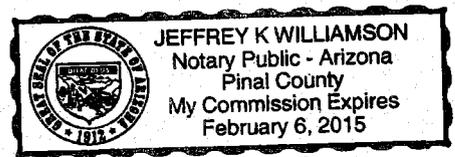
15 
16 _____
17 Beverly Michele West, Respondent

18 STATE OF ARIZONA)
19 County of Maricopa) ss

20 SUBSCRIBED AND SWORN TO BEFORE me this 22 day of JUNE, 2012 

21
22 
23 NOTARY PUBLIC

24 My commission expires:
25 2/6/15
26 _____



Ross West
Ross West, Respondent Spouse

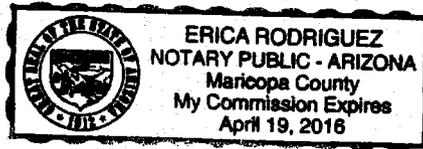
STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of June, 2011.

[Signature]
NOTARY PUBLIC

My commission expires:

April 19, 2016



SERVICE LIST FOR:

BEVERLY MICHELE WEST
DOCKET No. S-20806A-11-0234

Hubert E. Kelly, Esq.
Kelly & Kelly, PC
6900 E. Camelback Rd., Ste A39
Scottsdale, Arizona 85251-2459

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

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:)
)
BEVERLY MICHELE WEST and ROSS WEST,)
wife and husband,)
)
Respondent.)

DOCKET NO. S-20806A-11-0234

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: ORDER TO
CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE
PENALTIES AND CONSENT TO SAME BY: RESPONDENTS BEVERLY MICHELE WEST
AND ROSS WEST was filed with the Arizona Corporation Commission's Docket Control.

Dated: 7/6/12 By: Phong (Paul) Huynh

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:

Hubert E. Kelly, Esq.
Kelly & Kelly, PC
4500 North 32nd Street, Suite 100E
Phoenix, AZ 85018
Attorney for Respondent and Respondent Spouse

Dated: 7/6/12 By: Emie R. Bridges
Emie R. Bridges, Executive Assistant