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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

2012 JUN 22 P 4: 35

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUN 22 2012

DOCKETED BY [Signature]

In the matter of:

ANDREW C. MENICHINO, an married individual,

INNOVATIVE CONSTRUCTION, INC., a Pennsylvania Corporation, and

ATLANTIC LEXUS, LTD, a Turks and Caicos Corporation,

Respondents.

DOCKET NO. S-20839A-12-0083

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

Respondents Andrew C. Menichino; Innovative Construction, Inc.; and Atlantic Lexus, Ltd. (collectively "Respondents") submit their Answer to the Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution and for Administrative Penalties (the "Notice"). Respondents respond to the numbered paragraphs of the Notice as follows:

I.

JURISDICTION

1. Respondents deny the allegations in paragraph 1 of the Notice.

II.

RESPONDENTS

2. Respondents admit the allegations in paragraph 2 of the Notice.
3. Respondents admit the allegations in paragraph 3 of the Notice.

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4. The allegations in paragraph 4 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 4 of the Notice.

5. This allegation requires no response.

III.

FACTS

6. Respondents deny the allegations in paragraph 6 of the Notice.

7. Respondents deny the allegations in paragraph 7 of the Notice.

8. The allegations in paragraph 8 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 8 of the Notice.

9. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 9 of the Notice related to Mr. AF, and, therefore deny the allegations. Respondents deny each and every other allegation in paragraph 9 of the Notice.

10. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 10 of the Notice related to Mr. AF, and, therefore deny the allegations. Respondents deny each and every other allegation in paragraph 10 of the Notice.

11. Respondents deny the allegations in paragraph 11 of the Notice.

12. Respondents deny the allegations in paragraph 12 of the Notice.

13. Respondents deny the allegations in paragraph 13 of the Notice.

14. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 14 of the Notice related to Mr. AF, and, therefore deny the allegations. Respondents deny each and every other allegation in paragraph 14 of the Notice.

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15. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 15 of the Notice, and, therefore deny the allegations.

16. Respondents deny the allegations in paragraph 16 of the Notice.

17. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 17 of the Notice, and, therefore deny the allegations.

18. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 18 of the Notice, and, therefore deny the allegations.

19. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 19 of the Notice, and, therefore deny the allegations.

20. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 20 of the Notice, and, therefore deny the allegations.

21. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 21 of the Notice, and, therefore deny the allegations.

22. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 22 of the Notice, and, therefore deny the allegations.

23. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 23 of the Notice, and, therefore deny the allegations.

24. Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 24 of the Notice, and, therefore deny the allegations.

25. The allegations in paragraph 25 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 25 of the Notice.

1 26. The allegations in paragraph 26 are an inaccurate, incomplete and misleading
2 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 26
3 of the Notice.

4 27. The allegations in paragraph 27 are an inaccurate, incomplete and misleading
5 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 27
6 of the Notice.

7 28. Respondents are without sufficient knowledge or information to admit or deny the
8 allegations contained in paragraph 28 of the Notice, and, therefore deny the allegations.
9

10 29. The allegations in paragraph 29 are an inaccurate, incomplete and misleading
11 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 29
12 of the Notice.

13 30. The allegations in paragraph 30 are an inaccurate, incomplete and misleading
14 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 30
15 of the Notice.

16 31. Respondents are without sufficient knowledge or information to admit or deny the
17 allegations contained in paragraph 31 of the Notice, and, therefore deny the allegations.
18

19 32. Respondents are without sufficient knowledge or information to admit or deny the
20 allegations contained in paragraph 32 of the Notice, and, therefore deny the allegations.

21 33. The allegations in paragraph 33 are an inaccurate, incomplete and misleading
22 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 33
23 of the Notice.

24 34. Respondents are without sufficient knowledge or information to admit or deny the
25 allegations contained in paragraph 34 of the Notice, and, therefore deny the allegations.
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- 1 44. Respondents deny the allegation in paragraph 44 of the Notice.
2 45. Respondents deny the allegation in paragraph 45 of the Notice.
3 46. Respondents deny each and every allegations not admitted herein.

4 **AFFIRMATIVE DEFENSES**

5 The following affirmative defenses nullify any potential claims asserted by the Division.
6 Respondents reserve the right to amend this Answer to assert additional defenses after completion
7 of discovery.
8

9 First Affirmative Defense

10 The ACC cannot meet the applicable standards for any of the relief it is seeking in the
11 Notice.

12 Second Affirmative Defense

13 The Notice fails to state a claim upon which relief can be granted.

14 Third Affirmative Defense

15 Respondents did not offer or sell securities within the meaning of the Arizona Securities
16 Act.
17

18 Fourth Affirmative Defense

19 Respondents did not offer or sell any investment contracts to Arizona residents.

20 Fifth Affirmative Defense

21 Respondents did not engage in any activity that required registration with the Arizona
22 Corporation Commission's Securities Division.
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24 Sixth Affirmative Defense

25 If the program at issue is determined to be a security, it was exempt from registration
26 and/or sold in an exempt transaction.
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Seventh Affirmative Defense

Respondent Menichino did not act with the requisite scienter.

Eighth Affirmative Defense

The Division has failed to plead fraud with reasonable particularity as required by Rule 9(b) of the Arizona Rules of Civil Procedure.

Ninth Affirmative Defense

The alleged investors suffered no injuries or damages as a result of Respondents alleged acts.

Tenth Affirmative Defense

The alleged investors alleged injuries or damages are the result of acts or omissions committed by non-parties.

Eleventh Affirmative Defense

Respondents did not employ a device, scheme or artifice to defraud the alleged investors.

Twelfth Affirmative Defense

Respondents did not make or intentionally make any untrue statements of material fact that were misleading.

Thirteenth Affirmative Defense

The alleged investors could not have reasonably relied upon any statement or action by Respondents.

Fourteenth Affirmative Defense

Respondents did not engage in any transaction, practice or course of business that operated or would operate as a fraud or deceit upon the alleged investors.

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TELEPHONE NO 480-968-1225
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Fifteenth Affirmative Defense

Restitution is not an appropriate remedy.

Sixteenth Affirmative Defense

To the extent an award of restitution is ordered, the ACC should use its discretion to reduce the amount, if any, Respondents must pay.

Seventeenth Affirmative Defense

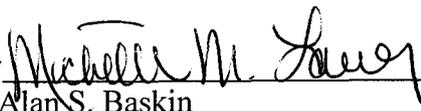
Respondents did not violate A.R.S. §§ 44-1841, 44-1842, or 44-1991.

Eighteenth Affirmative Defense

Respondents allege such other affirmative defenses set forth in the Arizona Rules of Civil Procedure 8(c) as may be determined to be applicable during discovery.

RESPECTFULLY SUBMITTED this 22nd day of June, 2012.

BADE BASKIN RICHARDS PLC

By 
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1 ORIGINAL and thirteen copies of the foregoing
2 filed this 22nd day of June, 2012 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 22nd day of June, 2012 to:

9 Matthew J. Neubert
10 Director of Securities
11 Securities Division
12 Arizona Corporation Commission
13 1300 W. Washington Street, 3rd Floor
14 Phoenix, AZ 85007

15 COPY of the foregoing mailed
16 this 22nd day of June, 2012 to:

17 Paul Huynh
18 Securities Division
19 Arizona Corporation Commission
20 1300 W. Washington, 3rd Floor
21 Phoenix, AZ 85007

22 

23 menichino.acc/ltr/answer

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