

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

2012 SEP 21 P 3 15

Arizona Corporation Commission

DOCKETED

SEP 21 2012

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AZ CORP COMMISSION
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In the matter of:

INTERNATIONAL AIR MEDICAL
SERVICES, INC.,

THOMAS F. KELLEY and LAURA
KELLEY, husband and wife,

Respondents.

DOCKET NO. S-20858A-12-0412

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND 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 INTERNATIONAL AIR MEDICAL SERVICES, INC. and THOMAS F. KELLEY 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 further alleges THOMAS F. KELLEY is a person controlling INTERNATIONAL AIR MEDICAL SERVICES, INC. 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 INTERNATIONAL AIR MEDICAL SERVICES, INC. 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.

II.**RESPONDENTS**

2. At all times relevant, Respondent THOMAS F. KELLEY ("Kelley") has been a married man and a resident of the state of Arizona. At all times relevant, Kelley offered and sold unregistered securities within and from Arizona in his individual capacity, and on behalf of INTERNATIONAL AIR MEDICAL SERVICES, INC. ("IAMS") as the president and/or CEO, and general counsel. Kelley has not been registered by the Commission as a securities salesman or dealer.

3. At all times relevant, Respondent IAMS has been an Arizona corporation. IAMS was organized under the laws of the state of Arizona in September 2006, dissolved in 2009, and was re-organized under the laws of the state of Arizona in October 2009. IAMS has not been registered by the Commission as a securities salesman or dealer.

4. LAURA KELLEY was at all relevant times the spouse of Respondent Kelley. Laura Kelley may be referred to as "Respondent Spouse". Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all times relevant, Respondent Kelley was acting for his own benefit and for the benefit or in furtherance of his and Respondent Spouse's marital community.

6. IAMS and Kelley may be referred to collectively as "Respondents."

III.**FACTS**

7. From on or about September 2009 until at least June 2012, Kelley offered and sold promissory notes and/or stock in IAMS, a long range jet air ambulance company ("IAMS Investments").

8. From at least September 2009 to the present, Kelley acted as general counsel, president and/or CEO of IAMS.

1 9. Respondents offered the IAMS Investments to Arizona offerees, and to out of
2 state offerees from Arizona. Respondents represented to offerees that IAMS was a start-up long
3 range jet air ambulance business. Respondents represented to offerees and that investor funds
4 would be used to establish a headquarters in Arizona; obtain a federally mandated commercial
5 operating certificate (Part 135 certification) to conduct operations for compensation or hire;
6 operate from Arizona; and then expand the business to establish bases in other states to increase
7 service capacity (i.e. the ability to accept more air ambulance flights).

8 10. Respondents raised funds for the IAMS Investments and issued investors IAMS
9 stock, promissory notes, and/or a combination of promissory notes and stock.

10 11. The IAMS Investments have not been registered as securities with the
11 Commission to be offered or sold within or from Arizona.

12 12. IAMS, either through Kelley or authorized third parties, supplied offerees with
13 subscription documents, business plans, PowerPoint presentations, and, in at least one instance, a
14 private placement memorandum, for the IAMS Investments. Investor documents were drafted
15 and finalized for content by Kelley.

16 13. At least one business plan provided to an investor stated, "We have created this
17 unique opportunity where the investor can elect to have the security of getting 100% of their
18 money returned plus interest."

19 14. In promoting the IAMS Investments, Respondents represented to offerees that
20 Kelley's previous involvement in the start-up, management, and profitable sale of another air
21 ambulance company, "Native Air", was indicative of the projected success of IAMS. IAMS
22 failed to disclose to investors that "Native Air" was a minority-owned company, which was
23 largely successful in generating revenue as a result of minority contracts. IAMS does not and has
24 not had any minority ownership interests that make it eligible for similar minority contracts.
25
26

1 15. In October 2011, IAMS held an "open house" in which the IAMS Investments
2 were offered to attendees. Shortly thereafter, representatives of IAMS sent e-mails to attendees
3 attaching an IAMS brochure, PowerPoint presentation, and business plan.

4 16. In October 2011, Respondents also retained a third party located in Arizona to
5 raise capital on behalf of IAMS. From at least December 2011 through February 2012, this third
6 party, on behalf of IAMS and with authorization to do so by IAMS, offered the IAMS
7 Investments to offerees.

8 17. This authorized third party offered the IAMS Investments to thousands of offerees
9 by, *inter alia*, sending an e-mail in February, 2012 ("IAMS e-mail blast"). The IAMS e-mail
10 blast stated in part, "We are looking for a couple of VC funds to co-invest in a very high growth
11 company in the US. This company [IAMS] is in the long range air ambulance business to
12 transport patients over great distances to their desired medical facility." The recipient offerees of
13 the IAMS e-mail blast had no pre-existing relationship with Respondents or the authorized third
14 party sending the e-mail.

15 18. From at least September 2009 until at least June 2012, IAMS issued promissory
16 notes in exchange for capital investments by at least fourteen investors. The majority of these
17 promissory notes reflect varying interest rates between 8% - 20%, with higher default interest
18 rates, and terms for repayment from approximately 30 days to three years. For at least thirteen of
19 these investors, IAMS issued the promissory notes in conjunction with either preferred or
20 common stock in IAMS (hereafter "Equity + Note Investors").

21 19. In 2009, IAMS represented to at least one Equity + Note Investor that "THERE
22 WILL BE AN ESCROW OF FUNDS UP TO AND NOT TO EXCEED \$200,000. ONCE
23 \$200,000 IN SUBSCRIPTION MONEYS HAS BEEN RECEIVED IN ESCROW, ALL
24 SUBSCRIPTION MONEYS, INCLUDING THE ORIGINAL ESCROW, WILL BE
25 IMMEDIATELY AVAILABLE TO THE COMPANY FOR ITS OPERATING EXPENSES."

26 20. IAMS has never escrowed any investor funds.

1 21. For at least five of the Equity + Note Investors, IAMS issued Stock Purchase
2 Agreements or Secured Loan Agreements ("Agreements") in conjunction with a promissory note
3 ("Secured Equity + Note Investors"). The first of these Secured Equity + Note Investors invested
4 in June 2011 ("First Secured Equity + Note Investor").

5 22. The Agreements for each of the Secured Equity + Note Investors provided for
6 IAMS stock to be issued to the investor upon receipt of investment funds, and specifically
7 referenced as "Attachment A" a promissory note, and "Attachment B" a security agreement, that
8 would also be issued when investment funds were received.

9 23. Each of these Secured Equity + Note Investors' investment documents contained
10 the following terms:

- 11 a. A 10% interest rate;
- 12 b. Quarterly interest payments;
- 13 c. A balloon payment of principal and accrued but unpaid interest after 35-36
14 months;
- 15 d. An option to convert outstanding principal and unpaid interest to IAMS
16 shares of stock.

17 24. Each of these Secured Equity + Note Investors' investment documents contained
18 the following representations:

- 19 a. That IAMS pledged security in "all assets of IAMS all assets of IAMS
20 now existing or hereafter arising or acquired" for each investor;
- 21 b. That "[t]he debt described herein is IAMS' most senior debt";
- 22 c. That the collateral was "free from any lien, claim, security interest,
23 encumbrance, or other right, title, or interest of any other person or entity except
24 the Senior Lender(s)."

1 d. "Debtor [IAMS] will not hereafter grant security interest in, or sell the
2 Collateral to, any other person, firm or corporation, without Secured Party's
3 [investor's] consent.

4 25. An additional investor that was issued only promissory notes for his investments
5 in IAMS was also pledged security in "all assets of IAMS now existing or hereafter arising or
6 acquired" ("Note Only Investor"). IAMS promised the Note Only Investor that the collateral was
7 "free from any lien claim security interest, encumbrance, or other right, title, or interest of any
8 other person or entity except the Senior Lender(s)." The term "Senior Lenders(s)" was not
9 defined in the investment materials. *Olsen*

10 26. With the exception of the First Secured Equity + Note Investor, IAMS
11 misrepresented to the remaining Secured Equity + Note Investors, that they held the "most senior
12 debt" and that the collateral was "free from any lien, claim, security interest, encumbrance, or
13 other right, title, or interest of any other person or entity except the Senior Lender(s)." IAMS
14 failed to disclose previous security interests pledged in the same collateral or disclose previous
15 note-holders with priority.

16 27. IAMS failed to obtain the Secured Equity + Note Investors' consent when
17 pledging the same collateral to subsequent investors.

18 28. IAMS misrepresented to the Note Only Investor that the collateral pledged was
19 "free from any lien, claim, security interest, encumbrance, or other right, title, or interest of any
20 other person or entity except the Senior Lender(s)" and failed to disclose previous note-holders
21 with priority.

22 29. Kelley was a signatory for IAMS for the promissory notes and security
23 agreements issued to investors.

24 30. The majority of investors who invested via promissory notes with IAMS have not
25 been paid as required under the terms of their notes, with many receiving no payments at all.
26

1 31. IAMS also issued IAMS common or preferred stock to investors in exchange for
2 capital contributions ("Equity Only Investors"). At least six investors invested in IAMS as
3 Equity Investors.

4 32. The majority of Equity Only Investors executed Stock Purchase Agreements with
5 IAMS. Kelley signed the Stock Purchase Agreements as the President and General Counsel of
6 IAMS.

7 33. The Stock Purchase Agreements required IAMS to deliver stock certificates to
8 each investor. IAMS failed to issue or delayed (in one instance nearly a year) issuing a stock
9 certificate for at least three investors.

10 34. The IAMS stock certificates that were issued to investors were issued and signed
11 by Kelley.

12 35. On numerous occasions, Kelley offered IAMS board of director positions at
13 IAMS as part of the IAMS Investments, yet did not have any board resolutions to do so. Further,
14 these "board member investors" have not been advised of board meetings or presented with any
15 opportunity to vote as board members.

16 36. Respondents issued and sold promissory notes and/or stock in IAMS to investors
17 totaling approximately \$1,552,000. Of this amount, investors have received payments totaling
18 only approximately \$160,700.

19 37. Term sheets were also provided to offerees, which stated that stockholders had
20 voting rights in IAMS with the shares consistent with IAMS's Articles of Incorporation and By
21 Laws. Offerees were also advised that stockholders would be able to elect board members and
22 appoint a Chairman of the Board.

23 38. IAMS' By Laws provide for annual stockholder meetings to elect board members
24 starting in 2008. As of July 2012, IAMS has held no annual stockholder meetings. IAMS has
25 appointed numerous board members without any election by stockholders, appointed board
26

1 members that exceed the cap of nine allowed by IAMS' By Laws, with Kelley alone appointing a
2 Chairman of the Board.

3 39. Investors' funds were transferred, wired and/or deposited into Arizona bank
4 accounts owned and controlled by Respondents.

5 40. Kelley, as well as one other IAMS officer, utilized the IAMS account, which
6 included investor funds, for their own personal expenses. This included expenses for litigation
7 unrelated to IAMS, expenses for a boat in San Diego unrelated to IAMS, personal mortgage
8 payments, and family expenses. Respondents failed to disclose to potential investors that investor
9 funds had been and would be expended for personal use. The board of directors has never
10 approved any compensation or salaries for officers of IAMS, which is required by the IAMS By
11 Laws.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

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

15 41. From on or about September 2009 until at least June 2012, Respondents offered or
16 sold securities in the form of notes and stock within or from Arizona.

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

19 43. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

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

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

25 45. 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)

46. In connection with the offer or sale of securities within or from Arizona, Respondents 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) Representing that the "investor can elect to have the security of getting 100% of their money returned plus interest", but failing to return the investor's principal or pay interest owed.

b) Representing that Kelley's previous involvement in the start-up, management, and profitable sale of another air ambulance company, "Native Air", was indicative of the projected success of IAMS, but failing to disclose to investors that "Native Air" was a minority-owned company, which was largely successful in generating revenue as a result of minority contracts for which IAMS was ineligible.

c) Representing that investor funds would be escrowed until a threshold amount was obtained in investment funds before releasing it for IAMS operational costs, but failing to escrow any investor funds.

d) Pledging to multiple investors that each of their investments was secured by "all assets of IAMS all assets of IAMS now existing or hereafter arising or acquired", while misrepresenting that each investor had the "most senior debt" and that the collateral had not been previously pledged as security to any other person or entity.

e) Representing to multiple investors that IAMS would not thereafter grant another security interest in the collateral pledged – all present and future assets of IAMS – without the

investor's consent, but pledging the same collateral as security to subsequent investors without consent.

f) Promising to provide each stockholder with a stock certificate at the time of investment, but delaying or failing to issue a stock certificate for some investors.

g) Representing to equity investors that they had voting rights in IAMS, including the ability to attend annual shareholder meetings, to vote on the board of directors, and to appoint a Chairman of the Board, but instead appointing directors and a Chairman without any shareholder meetings.

h) Failing to disclose that IAMS investor funds would be expended for unrelated personal use by Kelley and another IAMS officer.

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

48. Kelley directly or indirectly controlled IAMS within the meaning of A.R.S. § 44-1999. Therefore, Kelley is jointly and severally liable to the same extent as IAMS for its violations of A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital communities of Respondent Kelley and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

IX.

ANSWER REQUIREMENT

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

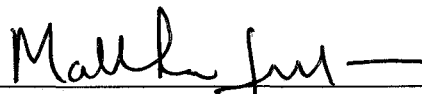
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Stacy Luedtke.

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

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

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

Dated this 21st day of September, 2012


Matthew J. Neubert
Director of Securities