

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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BRENDA BURNS

DOCKETED BY  
nr

In the matter of:  
PATRICK LEONARD SHUDAK, a single man,  
PROMISE LAND PROPERTIES, LLC, an Arizona limited liability company,  
and  
PARKER SKYLAR & ASSOCIATES, LLC, an Arizona limited liability company,  
Respondents.

DOCKET NO. S-20859A-12-0413

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 PATRICK LEONARD SHUDAK, PROMISE LAND PROPERTIES, LLC and PARKER SKYLAR & ASSOCIATES, 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").

The Division further alleges that Respondent PATRICK LEONARD SHUDAK ("SHUDAK") directly or indirectly controlled PARKER SKYLAR & ASSOCIATES, LLC within the meaning of A.R.S. § 44-1999; SHUDAK is jointly and severally liable with, and to the same extent as the entity, for the entity's violations of the anti-fraud provisions of the Securities Act.

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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. SHUDAK is a single man who, at all relevant times, resided in Arizona.

3. PROMISE LAND PROPERTIES, LLC (“PROMISE LAND”) is a manager-managed Arizona limited liability company (“PROMISE LAND”) organized on March 8, 2007. At all relevant times SHUDAK was the manager of PROMISE LAND.

4. PARKER SKYLAR & ASSOCIATES, LLC (“PARKER SKYLAR”) is an Arizona limited liability company organized on May 17, 2007. From its formation to April 1, 2008, PARKER SKYLAR was a member-managed LLC and SHUDAK was the sole member listed. An April 1, 2008 amendment to PARKER SKYLAR’s articles of organization made PARKER SKYLAR a manager-managed company with SHUDAK as the manager.

5. SHUDAK, PROMISE LAND and PARKER SKYLAR may be referred to collectively as “Respondents.”

III.

**FACTS**

6. This case involves SHUDAK’s role in raising capital for two real estate developments in Cochise County, Arizona.

**The Tombstone Project.**

7. The first project was a residential development on approximately 1280 acres near Tombstone, Arizona (the “Tombstone Project”). The entity developing the Tombstone Project was Cochise County Land, LLC (“CC Land”), an Arizona limited liability company organized on May 22, 2007, for the purpose of developing the Tombstone Project. CC Land’s articles of organization

1 list an Arizona real estate developer (“Developer”) as the manager of CC Land and PROMISE  
2 LAND as a member.

3 8. Under CC Land’s operating agreement, dated May 23, 2007, PROMISE LAND was  
4 to obtain debt financing secured by the 1280 acres being acquired and to make additional capital  
5 contributions not to exceed \$2,185,000. The money would be used to purchase the 1280 acres and  
6 develop the Tombstone Project through the attainment of a final plat.

7 9. In order to satisfy its financial obligations under CC Land’s operating agreement,  
8 PROMISE LAND and SHUDAK raised money within and from Arizona by selling membership  
9 interests in PROMISE LAND (the “P-L Membership Interests”).

10 10. Beginning in January 2008, SHUDAK met potential PROMISE LAND investors  
11 and offerees by contacting acquaintances and through existing investors and acquaintances  
12 referring their acquaintances. Six persons ultimately purchased P-L Membership Interests (these  
13 six persons, the “P-L Investors”). The P-L Investors include an Arizona entity, an individual from  
14 Arizona, three individuals from Nebraska, and an individual from Minnesota.

15 11. The P-L Investors purchased P-L Membership Interests totaling 17.5% of  
16 PROMISE LAND.

17 12. These six P-L Investors paid a total of approximately \$958,000 for the P-L  
18 Membership Interests.

19 13. PROMISE LAND and SHUDAK sold the P-L Membership Interests within and  
20 from Arizona. The P-L Membership Interests were not registered with the Commission.

21 14. The P-L Investors were not involved in the development of the Tombstone Project  
22 or the management of PROMISE LAND. They relied on SHUDAK and PROMISE LAND’s  
23 efforts to realize a return on their investment.

24 15. CC Land purchased the property for the Tombstone Project in part by using  
25 financing from an institutional money lender. This lender has since foreclosed on CC Land’s  
26 property. CC Land is not currently conducting any business.

1 **The Bisbee Project.**

2 16. The second project for which SHUDAK raised capital was a residential real estate  
3 development on 1900 acres near Bisbee, Arizona (the "Bisbee Project").

4 17. The entity developing the Bisbee Project was Cochise County 1900, LLC, ("CC  
5 1900"). Developer and SHUDAK organized CC 1900 on February 29, 2008, for the purpose of  
6 acquiring the 1900 acres (the "Bisbee Property") and developing the Bisbee Project.

7 18. Developer was the manager of CC 1900.

8 19. From the time of CC 1900's organization through September 2010, CC 1900's  
9 articles of organization listed either SHUDAK or an entity controlled by SHUDAK as a second  
10 member. Beginning April 1, 2008, CC 1900's articles listed PARKER SKYLAR as a member.

11 20. CC 1900's operating agreement, dated April 14, 2008, lists SHUDAK as a 50%  
12 owner of CC 1900.

13 21. As described in the CC 1900 operating agreement, SHUDAK was responsible for  
14 obtaining "debt financing" secured by the Bisbee Property. SHUDAK is also responsible for  
15 making additional capital contributions to CC 1900 in an amount not to exceed \$2.5M. This money  
16 was to be used for acquisition of the Bisbee Property, taxes, insurance, professional fees and other  
17 operating expenses related to obtaining a final plat for the Bisbee Property.

18 **Sale of Parker Skylar Membership Interests.**

19 22. Beginning in January 2008, SHUDAK met potential PARKER SKYLAR investors  
20 and offerees through his participation in an Arizona-based church, through contacting  
21 acquaintances, and through existing investors and acquaintances referring their acquaintances.

22 23. SHUDAK conducted presentations with small groups of potential investors in  
23 several states including Arizona, Iowa and Nebraska.

24 24. During these presentations, SHUDAK described the Bisbee Project and told several  
25 potential investors that they would earn a substantial return on their investment in a short period of  
26 time, i.e. within two years and possibly within several months of investing.

1           25.     SHUDAK further assured at least one investor that the investment was risk free, a  
2 “slam dunk” and “easy money.” SHUDAK told the manager of two investors that the investment  
3 was risk free because SHUDAK would pay the investor his principal plus 13.2% interest if, after  
4 two years, the investor requested that his investment be returned.

5           26.     From January 2008 to July 2009, SHUDAK and PARKER SKYLAR, within and  
6 from Arizona, sold P-S Membership Interests totaling 88% to 17 investors, eight of which were  
7 entities; these investors were located in Arizona, Iowa, Minnesota and Nebraska (these 17 persons,  
8 the “P-S Investors”).

9           27.     In exchange for their contribution, 15 P-S Investors received an “Investment  
10 Purchase Agreement” executed by SHUDAK on behalf of PARKER SKYLAR and an assignment  
11 of the P-S Membership Interests purchased.

12           28.     These 15 P-S Investors also received notes issued by PARKER SKYLAR. The  
13 principal amount of each note equaled the respective cash investment of each P-S Investor (the  
14 “Note(s)"). Each Note provided 14%-per-annum interest and a balloon payment on or before a  
15 maturity date specified in each Note. These Notes were made in addition to the assignment of the  
16 P-S Membership Interests and, as stated in the Investment Purchase Agreement, payment of the  
17 Note did not affect the P-S Membership Interests held by the Note payee.

18           29.     The remaining two P-S Investors received an “Investment Agreement” executed by  
19 SHUDAK on behalf of PARKER SKYLAR and an assignment of the P-S Membership Interests  
20 purchased.

21           30.     The P-S Investors paid a total of approximately \$1,942,000 for their P-S  
22 Membership Interests.

23           31.     The majority of P-S Investors paid for their P-S Membership Interests with checks,  
24 cashier’s checks, money orders or wire transfers payable to SHUDAK, PARKER SKYLAR, an  
25 agent of SHUDAK, or a related, SHUDAK-controlled entity. P-S Investors sent the payments to  
26 SHUDAK, PARKER SKYLAR, an agent, or such related entity in Arizona. Respondents caused

1 the investment funds to be deposited into Arizona bank accounts owned and controlled by  
2 SHUDAK and PARKER SKYLAR.

3 32. At all relevant times, SHUDAK and PARKER SKYLAR have represented to  
4 offerees and investors that they will combine, pool or commingle the P-S Investor funds to fund  
5 and operate CC 1900's business, i.e. development of the Bisbee Project.

6 33. The P-S Investors were not involved in the development of the Bisbee Project or the  
7 management of PARKER SKYLAR. They relied on PARKER SKYLAR and SHUDAK's efforts  
8 and expertise to realize a return on their investment.

9 34. One investor has received small interest payments on his Notes; the majority of  
10 investors have not received a single payment or other return on their investment.

11 **Additional Assignments of P-S Interests and Sale of Notes.**

12 35. In addition to the P-S Membership Interests sold to P-S Investors, SHUDAK and  
13 PARKER SKYLAR transferred P-S Membership Interests totaling 24.5% to four other persons  
14 who did not contribute cash in exchange for their P-S Membership Interests.

15 36. On May 22, 2008, PARKER SKYLAR obtained a short-term, high-interest,  
16 \$250,000 loan from a private lender. In connection with this loan, PARKER SKYLAR transferred  
17 a 20% P-S Membership Interest to the lender and granted the lender a security interest in all of  
18 PARKER SKYLAR's assets. This lender took steps to perfect its security interest by filing a UCC  
19 Financing Statement with the Arizona Secretary of State.

20 37. On July 15, 2009, SHUDAK sold a note to an Arizona couple in the principal  
21 amount of \$200,000. SHUDAK represented that the funds would be used to pay for development  
22 of the Bisbee Project.

23 38. SHUDAK provided the note purchasers with an agreement titled "Collateral  
24 Assignment of Member's Interest in Limited Liability Company." This Collateral Assignment  
25 states that, in order to induce the note purchasers to accept the note, SHUDAK agreed to grant them  
26 a security interest "in and to" 50% of PARKER SKYLAR.

1           39.     At the time this note and collateral assignment were executed, however, PARKER  
2 SKYLAR and SHUDAK had already transferred P-S Membership Interests totaling 132.5%.

3 **Miscellaneous Allegations: SHUDAK and PARKER SKYLAR.**

4           40.     Respondents SHUDAK and PARKER SKYLAR sold a significant amount of P-S  
5 Membership Interests to P-S Investors after May 22, 2008, when PARKER SKYLAR and  
6 SHUDAK had granted a private lender a security interest in all of PARKER SKYLAR's assets  
7 through a "Loan and Security Agreement."

8           41.     SHUDAK failed to inform investors and offerees that the lender had taken steps to  
9 perfect its security interest by filing a UCC Financing Statement with the Arizona Secretary of  
10 State. SHUDAK also failed to inform investors that, several months after making the loan, the  
11 lender considered PARKER SKYLAR in default under the loan provisions, making all remedies  
12 under the "Loan and Security Agreement" available to the lender. These remedies could include  
13 taking possession of all of PARKER SKYLAR's assets.

14           42.     Respondents SHUDAK and PARKER SKYLAR also sold a significant amount of  
15 P-S Membership Interests to P-S Investors after SHUDAK and PARKER SKYLAR had assigned  
16 100% of the P-S Membership Interests. By December 6, 2008, SHUDAK had assigned P-S  
17 Membership Interests totaling 99%. After December 6, PARKER SKYLAR and SHUDAK sold an  
18 additional 30% of P-S Membership Interests in exchange for a total of approximately \$775,000.  
19 Thus, SHUDAK and PARKER SKYLAR sold P-S Memberships totaling at least 29% after 100%  
20 of the P-S Membership Interests had been assigned.

21           43.     All told, by selling P-S Membership Interests totaling 88% to the P-S Investors,  
22 transferring 24.5% to other persons, and assigning 20% to the institutional lender, SHUDAK and  
23 PARKER SKYLAR assigned P-S Membership Interests totaling 132.5%.

24           44.     SHUDAK and PARKER SKYLAR represented to the P-S Investors that investor  
25 funds would be used for CC 1900's development of the Bisbee Project. For example:  
26

1           a)       The Investment Purchase Agreement provided to 15 P-S Investors stated that  
2 PARKER SKYLAR was “formed to engage in the business of real estate development  
3 involving the acquisition, financing, entitlement, development, subdivision, marketing and  
4 sale of real property, and portions or lots thereof, consisting of approximately 1,900 acres of  
5 ranch land (formerly known as the Flying H Ranch, located East of the City of Sierra Vista,  
6 Arizona on Highway 92) in Cochise County Arizona.” The next section states that the  
7 investor was investing “In order to fund [PARKER SKYLAR]” and that “the investor  
8 desires to provide a portion of the needed capital” for PARKER SKYLAR.

9           b)       The “Investment Agreement” provided to the two remaining P-S Investors  
10 stated that their funds would be used “as earnest monies for the purchase of 1,900 acres next  
11 to Highway 92...in Cochise County, Arizona.”

12           c)       SHUDAK also provided the manager of two P-S Investors with CC 1900’s  
13 operating agreement. This Operating Agreement states that the purpose of CC 1900 is to  
14 purchase, develop and market the Bisbee Property. The Operating Agreement further states  
15 that SHUDAK is responsible for obtaining financing for CC 1900’s acquisition of the  
16 Bisbee Property and CC 1900’s costs for obtaining entitlements for the Bisbee Project.

17           d)       SHUDAK assured the manager of two P-S Investors and at least two other  
18 individual investors that their funds would be used solely for purchase and development of  
19 the Bisbee Project and that no investor funds would be used for SHUDAK’s personal  
20 expenses.

21       45.       In spite of these representations and in spite of PARKER SKYLAR not generating  
22 any profits, on several occasions SHUDAK made transfers of investor funds that did not benefit CC  
23 1900 or development of the Bisbee Project. For example:

24           a)       At the beginning of April 2008, PARKER SKYLAR’s bank account had a  
25 balance of less than \$100. During that month, P-S Investor funds totaling approximately  
26 \$300,000 were deposited in the bank account. During that month, SHUDAK caused

1           \$190,000 to be transferred to his personal account and \$100,000 to be transferred to Kathy  
2           Shudak, SHUDAK's ex-wife.

3           b)       At the beginning of August 2008, PARKER SKYLAR's bank account had a  
4           balance of less than \$1,000. During that month investor funds totaling approximately  
5           \$325,000 were deposited in the account. During this month, PARKER SKYLAR  
6           transferred approximately \$68,000 to SHUDAK; \$50,000 to CC Land; \$6,000 to a printing  
7           business owned by SHUDAK; \$14,000 to PROMISE LAND; and approximately \$30,000 to  
8           two churches.

9           46.     At all relevant times, SHUDAK and PARKER SKYLAR further represented to  
10          offerees and investors that PARKER SKYLAR's ability to repay the P-S Investors their principal  
11          investments and projected profits was interwoven with and dependent on SHUDAK's business  
12          expertise, operational experience and knowledge.

13          47.     For instance, SHUDAK represented to some investors that he had real estate  
14          development experience or knowledge.

15          48.     SHUDAK also represented that he was qualified to raise capital for a significant  
16          residential real estate development. The CC 1900 operating agreement, given to at least one P-S  
17          Investor, states that SHUDAK is responsible for raising capital to fund CC 1900's expenses for  
18          obtaining entitlements for the Bisbee Project and that SHUDAK will "bear the economic burden of  
19          discharging such costs [for obtaining entitlements] and related to [CC 1900] liabilities and the total  
20          risk of economic loss with respect to the Entitlement Phase Financing Costs."

21          49.     While soliciting the P-S Investors, the majority of whom invested after November  
22          2008, SHUDAK failed to inform potential investors that several of SHUDAK's creditors were  
23          suing SHUDAK. In some instances, judgment had been entered against SHUDAK prior to P-S  
24          Investors purchasing P-S Membership Interests. These lawsuits include the following cases in  
25          Maricopa County Superior Court:  
26

1 • CV2008-015975, filed on July 8, 2008. The court awarded plaintiff Marshall  
2 & Ilsey Bank a default judgment against SHUDAK in the principal amount of \$154,278.53  
3 on December 23, 2008, and an additional \$49,643.86 on January 6, 2009.

4 • CV2008-021639, filed on September 8, 2008. The court awarded plaintiff  
5 Marshall & Ilsey Bank a default judgment against SHUDAK on March 6, 2009, in the  
6 principal amount of \$43,744.47.

7 • CV2008-022801, filed on September 17, 2008. The court awarded plaintiff  
8 Marshall & Ilsey Bank a default judgment against SHUDAK on June 10, 2009, in the  
9 principal amount of \$356,985.54.

10 • CV2008-027952, filed on November 18, 2008. The court awarded plaintiff  
11 JP Morgan Chase a default judgment against SHUDAK on February 24, 2009, in the  
12 principal amount of \$99,157.67.

13 **Status of Bisbee Project.**

14 50. In 2010, CC 1900 amended its articles and operating agreement to remove PARKER  
15 SKYLAR as a member and replaced it with an entity organized by several P-S Investors. CC 1900  
16 continues to develop the Bisbee Project.

17 **IV.**

18 **VIOLATION OF A.R.S. § 44-1841**

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

20 **[SHUDAK, PROMISE LAND & PARKER SKYLAR]**

21 51. Beginning in March 2007, respondents SHUDAK and PROMISE LAND offered or  
22 sold securities in the form of investment contracts and notes within or from Arizona.

23 52. Beginning in January 2008, respondents SHUDAK and PARKER SKYLAR offered or  
24 sold securities in the form of investment contracts and notes within or from Arizona.

25 53. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
26 Securities Act.





**VIII.****HEARING OPPORTUNITY**

Each Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

**If a Respondent 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](mailto: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 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

1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
2 <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

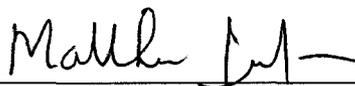
7 The Answer shall contain an admission or denial of each allegation in this Notice and the  
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not  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

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

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

16 Dated this 21st day of September, 2012

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Matthew J. Neuber  
Director of Securities