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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

FEB - 6 2013

COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

DOCKETED BY

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In the matter of

ANDREW C. MENICHINO, a married individual;

INNOVATIVE CONSTRUCTION, INC., a Pennsylvania Corporation,

ATLANTIC LEXUS, LTD., a Turks and Caicos Corporation;

Respondents.

DOCKET NO. S-20839A-12-0083

DECISION NO. 73664

ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME

BY: RESPONDENT ANDREW C. MENICHINO, INNOVATIVE CONSTRUCTION, INC., AND ATLANTIC LEXUS, LTD.

Respondents Andrew C. Menichino, Innovative Construction, Inc., and Atlantic Lexus, Ltd.

("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, For Restitution, 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.

FINDINGS OF FACT

1. Andrew C. Menichino ("MENICHINO") is a Pennsylvania resident.

1           2.     Innovative Construction, Inc., (“ICI”) is a Pennsylvania corporation incorporated on or  
2 about May 1, 2006. Atlantic Lexus, Ltd., (“ALL”) is a corporation incorporated in the Turks and  
3 Caicos Islands, British West Indies. ICI also does business as ALL.

4           3.     MENICHINO is a Director of ICI and ALL. ICI also did business as Atlantic Lexus,  
5 Ltd. ALL and ICI will be referred to as the “Menichino Entity.”

6           4.     MENICHINO and the Menichino Entity may be referred to collectively as  
7 “Respondents.”

8           5.     In or around February 2008, Steven M. Netzel (“Mr. Netzel”), an Arizona resident, was  
9 introduced to MENICHINO, who stated he was looking for financing or a loan to develop a  
10 commercial project located in the state of Pennsylvania.

11          6.     The discussions between Mr. Netzel and MENICHINO primarily occurred over the  
12 telephone or by e-mail, with Mr. Netzel being located in Arizona at all times relevant.

13          7.     MENICHINO represented to Mr. Netzel that MENICHINO owned Uniform  
14 Commercial Code “lien judgments and default judgments” (“UCC Liens”) that were worth millions of  
15 dollars.

16          8.     Mr. Netzel states that MENICHINO represented that the UCC Liens would be  
17 provided as collateral for the financing or loan to develop a commercial project located in the state of  
18 Pennsylvania. Mr. Netzel was also given copies of legal opinion letters that allegedly confirmed the  
19 existence and ownership of three valid UCC Liens in the name of or for the benefit of MENICHINO,  
20 with values exceeding \$10,000,000.

21          9.     MENICHINO stated to Mr. Netzel that the funds would generate a return of five  
22 percent a month, with the full principal repaid in one year and twenty days. In addition, profit  
23 participation would be possible, whereby an additional amount could be earned based on the profits  
24 generated from the Menichino commercial project (hereafter called the “Loan Contract”).

25          10.    MENICHINO asked Mr. Netzel to invest in the Loan Contract and subsequently  
26 provided him with various Loan Contract documents.

1           11.    MENICHINO suggested that Mr. Netzel offer the Loan Contract to Mr. Netzel's  
2 insurance business clients and/or friends.

3           12.    MENICHINO received \$400,000 of investment money from Mr. Netzel, which he  
4 raised from 8 investors.<sup>1</sup>

5           13.    MENICHINO informed Mr. Netzel that MENICHINO's offshore company, ALL,  
6 would be involved in the Loan Contract transaction and that an off shore entity, serving as a "pass-  
7 through" vehicle, would have to be created by Mr. Netzel in order that additional tax savings and other  
8 business benefits could be realized.

9           14.    Mr. Netzel formed an off shore entity in the Turks and Caicos Islands, British West  
10 Indies, by the name of Fasio, Ltd ("Fasio"), paid miscellaneous fees for its creation, and was named its  
11 director. Fasio was to operate as a pass-through entity.

12           15.    Pursuant to the terms of the Loan Contract, MENICHINO would submit principal and  
13 interest payments to Mr. Netzel, through Fasio.

14           16.    On or about October 2, 2008, MENICHINO, on behalf of the Menichino Entity,  
15 executed a promissory note in the amount of \$400,000, which promised to pay Fasio the full amount  
16 on or before October 14, 2009.

17           17.    Beginning December 2008, the monthly interest payments due from MENICHINO or  
18 the Menichino Entity ceased being paid by them.

19           18.    MENICHINO was convicted in Michigan and Florida for fourteen counts of bank  
20 fraud in 1993 and in 2003 for violating terms of his probation. In addition, MENICHINO was  
21 originally ordered to pay \$5,315,635 in restitution.<sup>2</sup>

22           19.    MENICHINO never disclosed to Mr. Netzel that he has been convicted and  
23 imprisoned for bank fraud or that he was ordered to pay restitution for the same offense.

24  
25 <sup>1</sup> On March 16, 2012, an Order to Cease and Desist, Order for Administrative Penalties, and Consent to Same by  
Steven M. Netzel, Decision No. 73061 was entered. See Docket No. S-20840A-12-0084 for further information.

26 <sup>2</sup> On April 23, 1993, Mr. Menichino was sentenced to 120 months in prison and three years of supervised release, the  
term of incarceration to be served consecutively to his two unexpired sentences in the Middle District of Florida.





1 annum from the date of purchase until paid in full. Interest in the amount of \$ 74,754.25 has  
2 accrued from the date of purchase to January 23, 2013.

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

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents  
12 MENICHINO, ICI, and ALL, jointly and severally shall pay an administrative penalty in the  
13 amount of \$50,000. Payment is due in full on the date of this Order. Payment shall be made to the  
14 "State of Arizona." Any amount outstanding shall accrue interest from the date judgment is entered  
15 at the rate of 10 percent per annum.

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

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

22 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this  
23 Order shall be deemed binding against any Respondent under this Docket Number who has not  
24 consented to the entry of this Order.

25 ....

26 ....

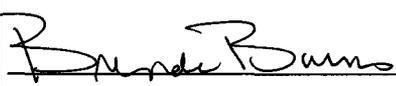
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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

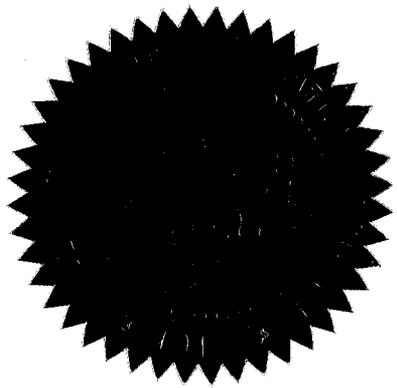
  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

  
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COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 6<sup>th</sup> day of February, 2013.

  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

(PTH)

**CONSENT TO ENTRY OF ORDER**

1  
2 1. Andrew C. Menichino ("MENICHINO"), Innovative Construction, Inc. ("ICI"), and  
3 Atlantic Lexus, Ltd. ("ALL"), collectively "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 rights to a hearing to present evidence and call witnesses and  
6 Respondents knowingly and voluntarily waive any and all right to a hearing before the Commission  
7 and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the  
8 Arizona Administrative Code. Respondents acknowledge that this Order to Cease and Desist, For  
9 Restitution, For Administrative Penalties, and Consent to Same ("Order") constitutes a valid final  
10 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 acknowledge that they have been represented by an attorney in this  
17 matter, Respondents have reviewed this Order with their attorney, Alan S. Baskin, Bade Baskin  
18 Richards PLC, and understand all terms it contains.

19 5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law  
20 contained in this Order. Respondents agree that Respondents shall not contest the validity of the  
21 Findings of Fact and Conclusions of Law contained in this Order in any present or future  
22 proceeding in which the Commission or any other Arizona state agency is a party.

23 6. By consenting to the entry of this Order, Respondents agree not to take any action or  
24 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
25 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
26 basis. Respondents will undertake steps necessary to assure that all of their agents and employees

1 understand and comply with this agreement. Notwithstanding the foregoing, this Order is not  
2 intended to collaterally estop, factually bind or preclude Respondents from defending themselves or  
3 taking a contrary position in any proceeding to which the Commission is not a party.

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

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

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

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

18 11. Respondents agree that Respondents will not exercise any control over any entity  
19 that offers or sells securities or provides investment advisory services within or from Arizona until  
20 such time as all restitution and penalties under this Order are paid in full.

21 12. Respondents consent to the entry of this Order and agree to be fully bound by its  
22 terms and conditions.

23 13. Respondents acknowledge and understand that if Respondents fails to comply with  
24 the provisions of the order and this consent, the Commission may bring further legal proceedings  
25 against Respondents, including application to the superior court for an order of contempt.  
26

1 14. Respondents understand that default shall render Respondents liable to the  
2 Commission for its costs of collection, including attorneys fees, and interest at the maximum legal  
3 rate pursuant to A.A.C. R14-4-308(c)(1)(b).

4 15. Respondents agree and understand that if Respondents fail to make any payment as  
5 required in the Order, any outstanding balance shall be in default and shall be immediately due and  
6 payable without notice or demand. Respondents agree and understand that acceptance of any  
7 partial or late payment by the Commission is not a waiver of default by the Commission.

8 16. Andrew C. Menichino represents that he is Director of ICI and ALL and has been  
9 authorized by name of ICI and ALL, respectively, to enter into this Order for and on their behalf.

*Andrew C. Menichino*

(Andrew C. Menichino)

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11  
12  
13 STATE OF PENNSYLVANIA )  
14 ) SS  
15 County of Lawrence )

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Linda K. Sotter, Notary Public  
City of New Castle, Lawrence County  
My Commission Expires March 29, 2013  
Member, Pennsylvania Association of Notaries

16 SUBSCRIBED AND SWORN TO BEFORE me this 8th day of January, 2013 .

*Linda K. Sotter*  
NOTARY PUBLIC

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18  
19 My commission expires:

20 March 29, 2013

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24 Innovative Construction, Inc.

*Andrew C. Menichino*

25 By (Andrew C. Menichino)  
26

Its (Director)

STATE OF PENNSYLVANIA )  
 ) SS  
County of Lawrence )

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Linda K. Sotter, Notary Public  
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My Commission Expires March 29, 2013  
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SUBSCRIBED AND SWORN TO BEFORE me this 8th day of January, 2013,

*Linda K. Sotter*

NOTARY PUBLIC

My commission expires:

March 29, 2013

Atlantic Lexus, Ltd.

*A. Menichino*

By (Andrew C. Menichino)

Its (Director)

STATE OF PENNSYLVANIA )  
 ) SS  
County of Lawrence )

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Linda K. Sotter, Notary Public  
City of New Castle, Lawrence County  
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*Linda K. Sotter*

NOTARY PUBLIC

My commission expires:

March 29, 2013

SERVICE LIST FOR:

In Re ANDREW C. MENICHINO, et. al., DOCKET NO. S-20839A-12-0083

1 Alan S. Baskin, Esq.  
2 Bade Baskin Richards PLC  
3 80 E Rio Salado Parkway, Suite 511  
4 Tempe, AZ 85281-0001  
5 Attorney for Respondents  
6 Andrew C. Menichino, Innovative Construction, Inc., and Atlantic Lexus, Ltd.  
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3 COMMISSIONERS

4 BOB STUMP, Chairman  
5 GARY PIERCE  
6 BRENDA BURNS  
7 BOB BURNS  
8 SUSAN BITTER SMITH

9 In the matter of:  
10 ANDREW C. MENICHINO, a married  
11 individual;  
12 INNOVATIVE CONSTRUCTION, INC., a  
13 Pennsylvania Corporation,  
14 ATLANTIC LEXUS, LTD., a Turks and Caicos  
15 Corporation;  
16 Respondents.

DOCKET NO. S-20839A-12-0083

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

17 Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease  
18 and Desist, for Restitution, for Administrative Penalties, and Consent to Same by the above-  
19 referenced Respondents was filed with the Arizona Corporation Commission's Docket Control.

20 Dated: 1/16/13 By: 

21 I hereby certify that I have this day served the foregoing document on all parties of record  
22 in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

23 Alan S. Baskin and Alexandra Mijares Nash  
24 Bade Baskin Richards PLC  
25 80 E Rio Salado Parkway, Suite 511  
26 Tempe, AZ 85281-0001  
Attorneys for Respondents

Dated: 1/16/13 By: 