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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MAR 21 2013

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

DOCKETED BY *nr*

<p>In the matter of:</p> <p>PATRICK LEONARD SHUDAK, a single man,</p> <p>PROMISE LAND PROPERTIES, LLC, an Arizona limited liability company,</p> <p>and</p> <p>PARKER SKYLAR & ASSOCIATES, LLC, an Arizona limited liability company,</p> <p style="text-align: center;">Respondents.</p>	<p>) DOCKET NO. S-20859A-12-0413</p> <p>) DECISION NO. <u>73784</u></p> <p>) ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER FOR ADMINISTRATIVE PENALTIES</p> <p>) RE: PARKER SKYLAR & ASSOCIATES, LLC</p>
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On September 21, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a 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 (the "Notice") against respondents Patrick Leonard Shudak, Promise Land Properties, LLC and PARKER SKYLAR & ASSOCIATES, LLC.

Respondents Shudak and Promise Land Properties, LLC timely filed a request for hearing and an answer.

PARKER SKYLAR & ASSOCIATES, LLC did not file a request for a hearing or an answer to the Notice within the respective filing deadlines and has not filed a request or an answer as of the date of this filing.

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I.

Findings of Fact

1
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3 1. Patrick Leonard Shudak (“Shudak”) is a single man who, at all relevant times, resided
4 in Arizona.

5 2. Promise Land Properties, LLC (“Promise Land”) is a manager-managed Arizona
6 limited liability company organized on March 8, 2007. At all relevant times Shudak was the manager
7 of Promise Land.

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

13 4. PARKER SKYLAR may be referred to as “Respondent.”

14 **The Bisbee Project.**

15 5. This case involves respondent Shudak’s role in raising capital for two real estate
16 developments in Cochise County, Arizona. This Order deals with the second and latter of these
17 two developments, a residential real estate development on 1900 acres near Bisbee, Arizona (the
18 “Bisbee Project”).

19 6. The entity developing the Bisbee Project was Cochise County 1900, LLC, (“CC
20 1900”). An Arizona land-developer (“Developer”) and Shudak organized CC 1900 on February
21 29, 2008, for the purpose of acquiring the 1900 acres (the “Bisbee Property”) and developing the
22 Bisbee Project. Developer was the manager of CC 1900.

23 7. From the time of CC 1900’s organization through September 2010, CC 1900’s
24 articles of organization listed either Shudak or an entity controlled by Shudak as a second member.
25 Beginning April 1, 2008, CC 1900’s articles listed PARKER SKYLAR as a member.

1 8. CC 1900's operating agreement, dated April 14, 2008, lists Shudak as a 50% owner
2 of CC 1900.

3 9. As described in the CC 1900 operating agreement, Shudak was responsible for
4 obtaining "debt financing" secured by the Bisbee Property. Shudak was also responsible for
5 making additional capital contributions to CC 1900 in an amount not to exceed \$2.5M. This money
6 was to be used for acquisition of the Bisbee Property, taxes, insurance, professional fees and other
7 operating expenses related to obtaining a final plat for the Bisbee Property.

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

9 10. Beginning in January 2008, Shudak met potential PARKER SKYLAR investors and
10 offerees through his participation in an Arizona-based church, through contacting acquaintances,
11 and through existing investors and acquaintances referring their acquaintances.

12 11. Shudak conducted presentations with small groups of potential investors in several
13 states including Arizona, Iowa and Nebraska.

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

17 13. Shudak further assured at least one investor that the investment was risk free, a
18 "slam dunk" and "easy money." Shudak told the manager of two investors that the investment was
19 risk free because Shudak would pay the investor his principal plus 13.2% interest if, after two
20 years, the investor requested that his investment be returned.

21 14. From January 2008 to July 2009, Shudak and PARKER SKYLAR, within and from
22 Arizona, sold P-S Membership Interests totaling 88% to 17 investors, eight of which were entities;
23 these investors were located in Arizona, Iowa, Minnesota and Nebraska (these 17 persons, the "P-S
24 Investors").

1 15. In exchange for their contribution, 15 P-S Investors received an "Investment
2 Purchase Agreement" executed by Shudak on behalf of PARKER SKYLAR and an assignment of
3 the P-S Membership Interests purchased.

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

10 17. The remaining two P-S Investors received an "Investment Agreement" executed by
11 Shudak on behalf of PARKER SKYLAR and an assignment of the P-S Membership Interests
12 purchased.

13 18. The P-S Investors paid a total of approximately \$1,942,000 for their P-S
14 Membership Interests.

15 19. The majority of P-S Investors paid for their P-S Membership Interests with checks,
16 cashier's checks, money orders or wire transfers payable to Shudak, PARKER SKYLAR, an agent
17 of Shudak, or a related, Shudak-controlled entity. P-S Investors sent the payments to Shudak,
18 PARKER SKYLAR, an agent, or such related entity in Arizona. Respondent and Shudak caused
19 the investment funds to be deposited into Arizona bank accounts owned and controlled by Shudak
20 and PARKER SKYLAR.

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

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1 21. The P-S Investors were not involved in the development of the Bisbee Project or the
2 management of PARKER SKYLAR. They relied on PARKER SKYLAR and Shudak's efforts and
3 expertise to realize a return on their investment.

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

6 **Additional Assignment of P-S Interests.**

7 23. In addition to the P-S Membership Interests sold to P-S Investors, Shudak and
8 PARKER SKYLAR transferred P-S Membership Interests totaling 24.5% to four other persons
9 who did not contribute cash in exchange for their P-S Membership Interests.

10 24. On May 22, 2008, PARKER SKYLAR obtained a short-term, high-interest,
11 \$250,000 loan from a private lender. In connection with this loan, PARKER SKYLAR transferred
12 a 20% P-S Membership Interest to the lender and granted the lender a security interest in all of
13 PARKER SKYLAR's assets. This lender took steps to perfect its security interest by filing a UCC
14 Financing Statement with the Arizona Secretary of State.

15 **Additional Improper Conduct.**

16 25. Respondents Shudak and PARKER SKYLAR sold a significant amount of P-S
17 Membership Interests to P-S Investors after May 22, 2008, when PARKER SKYLAR and
18 SHUDAK had granted a private lender a security interest in all of PARKER SKYLAR's assets
19 through a "Loan and Security Agreement."

20 26. Shudak failed to inform investors and offerees that the lender had taken steps to
21 perfect its security interest by filing a UCC Financing Statement with the Arizona Secretary of
22 State. Shudak also failed to inform investors that, several months after making the loan, the lender
23 considered PARKER SKYLAR in default under the loan provisions, making all remedies under the
24 "Loan and Security Agreement" available to the lender. These remedies could include taking
25 possession of all of PARKER SKYLAR's assets.

1 27. Respondents Shudak and PARKER SKYLAR also sold a significant amount of P-S
2 Membership Interests to P-S Investors after Shudak and PARKER SKYLAR had assigned 100% of
3 the P-S Membership Interests. By December 6, 2008, Shudak had assigned P-S Membership
4 Interests totaling 99%. After December 6, PARKER SKYLAR and Shudak sold an additional 30%
5 of P-S Membership Interests in exchange for a total of approximately \$775,000. Thus, Shudak and
6 PARKER SKYLAR sold P-S Memberships totaling at least 29% after 100% of the P-S
7 Membership Interests had been assigned.

8 28. All told, by selling P-S Membership Interests totaling 88% to the P-S Investors,
9 transferring 24.5% to other persons, and assigning 20% to the institutional lender, Shudak and
10 PARKER SKYLAR assigned P-S Membership Interests totaling 132.5%.

11 29. Shudak and PARKER SKYLAR represented to the P-S Investors that investor funds
12 would be used for CC 1900's development of the Bisbee Project. For example:

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

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

24 c) Shudak also provided the manager of two P-S Investors with CC 1900's
25 operating agreement. This Operating Agreement states that the purpose of CC 1900 is to
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1 purchase, develop and market the Bisbee Property. The Operating Agreement further states
2 that Shudak is responsible for obtaining financing for CC 1900's acquisition of the Bisbee
3 Property and CC 1900's costs for obtaining entitlements for the Bisbee Project.

4 d) Shudak assured the manager of two P-S Investors and at least two other
5 individual investors that their funds would be used solely for purchase and development of
6 the Bisbee Project and that no investor funds would be used for Shudak's personal
7 expenses.

8 30. In spite of these representations and in spite of PARKER SKYLAR not generating
9 any profits, on several occasions Shudak made transfers of investor funds that did not benefit CC
10 1900 or development of the Bisbee Project. For example:

11 a) At the beginning of April 2008, PARKER SKYLAR's bank account had a
12 balance of less than \$100. During that month, P-S Investor funds totaling approximately
13 \$300,000 were deposited in the bank account. During that month, Shudak caused \$190,000
14 to be transferred to his personal account and \$100,000 to be transferred to Kathy Shudak,
15 Shudak's ex-wife.

16 b) At the beginning of August 2008, PARKER SKYLAR's bank account had a
17 balance of less than \$1,000. During that month investor funds totaling approximately
18 \$325,000 were deposited in the account. During this month, PARKER SKYLAR
19 transferred approximately \$68,000 to Shudak; \$50,000 to CC Land; \$6,000 to a printing
20 business owned by Shudak; \$14,000 to Promise Land; and approximately \$30,000 to two
21 churches.

22 31. At all relevant times, Shudak and PARKER SKYLAR further represented to
23 offerees and investors that PARKER SKYLAR's ability to repay the P-S Investors their principal
24 investments and projected profits was interwoven with and dependent on Shudak's business
25 expertise, operational experience and knowledge.

1 32. For instance, Shudak represented to some investors that he had real estate
2 development experience or knowledge.

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

9 34. While soliciting the P-S Investors, the majority of whom invested after November
10 2008, Shudak failed to inform potential investors that several of Shudak's creditors were suing
11 Shudak. In some instances, judgment had been entered against Shudak prior to P-S Investors
12 purchasing P-S Membership Interests. These lawsuits include the following cases in Maricopa
13 County Superior Court:

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

17 • CV2008-021639, filed on September 8, 2008. The court awarded plaintiff
18 Marshall & Ilsley Bank a default judgment against Shudak on March 6, 2009, in the
19 principal amount of \$43,744.47.

20 • CV2008-022801, filed on September 17, 2008. The court awarded plaintiff
21 Marshall & Ilsley Bank a default judgment against Shudak on June 10, 2009, in the
22 principal amount of \$356,985.54.

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

1 **Status of Bisbee Project.**

2 35. In 2010, CC 1900 amended its articles and operating agreement to remove PARKER
3 SKYLAR as a member and replaced it with an entity organized by several P-S Investors.
4 Afterwards, CC 1900 continued to develop the Bisbee Project.

5 **II.**

6 **Conclusions of Law**

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution and the Securities Act.

9 2. Respondent PARKER SKYLAR offered or sold securities within or from
10 Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

11 3. Respondent PARKER SKYLAR violated A.R.S. § 44-1841 by offering and selling
12 securities in the form of investment contracts and notes within or from Arizona; these securities were
13 not registered pursuant to Articles 6 or 7 of the Securities Act and were not exempt from registration.

14 4. Respondent PARKER SKYLAR violated A.R.S. § 44-1842 by offering or selling
15 securities while neither registered as a dealer or salesman nor exempt from registration.

16 5. Respondent PARKER SKYLAR violated A.R.S. § 44-1991 by directly or indirectly:
17 (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or
18 omitting to state material facts that were necessary in order to make the statements made not
19 misleading in light of the circumstances under which they were made; or (iii) engaging in transactions,
20 practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and
21 investors. PARKER SKYLAR's conduct includes, but is not limited to, the following:

22 a) Selling at least 29% of P-S Membership Interests to P-S Investors after 100%
23 of P-S Membership Interests had been assigned;

24 b) Representing to P-S Investors that all investor funds raised would be
25 transferred to CC 1900 to be used for the purchase of the Bisbee Property and expenses related
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1 to obtaining a final plat for the Bisbee Project when in fact, on several occasions, the money
2 raised was not transferred to or used for the benefit of CC 1900;

3 c) Failing to disclose that a private lender had taken steps to perfect its security
4 interest in all of PARKER SKYLAR's assets and that the lender considered PARKER
5 SKYLAR in default of its obligations to the lender; and

6 d) Representing that its manager, Shudak, was qualified and had expertise and
7 experience to raise capital sufficient to CC 1900's operations while failing to disclose to
8 several P-S Investors that several of Shudak's creditors had sued Shudak.

9 6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. §
10 44-2032.

11 7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
12 2032.

13 8. Respondent's conduct is grounds for administrative penalties pursuant to A.R.S. §
14 44-2036.

15 **III.**

16 **Order**

17 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the
18 Commission finds that the following relief is appropriate, in the public interest, and necessary for
19 the protection of investors:

20 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
21 agents, employees, successors and assigns, permanently cease and desist from violating the
22 Securities Act.

23 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent and all
24 respondents against whom orders are entered awarding restitution for the P-S Investor funds (as
25 described above and shown in the attached *Exhibit A*) under Docket No. S-20859A-12-0413 shall

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1 jointly and severally pay restitution to the Commission in the principal amount of \$1,942,000, plus
2 interest calculated pursuant to R14-4-308(C)(1) from the date of purchase until paid in full, subject
3 to legal setoffs pursuant to A.A.C. R14-4-308. Payment is due in full on the date of this Order.
4 Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account
5 controlled by the Commission.

6 IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will
7 accrue interest at the rate of the lesser of (i) ten percent per annum or (ii) at a rate per annum that is
8 equal to one per cent plus the prime rate as published by the board of governors of the federal
9 reserve system in statistical release H.15 or any publication that may supersede it on the date that
10 the judgment is entered.

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

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that Respondent shall pay an
20 administrative penalty in the amount of \$50,000. Payment is due in full on the date of this Order.
21 Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest as
22 allowed by law.

23 IT IS FURTHER ORDERED that the administrative penalty ordered in the preceding
24 paragraph will accrue interest at the rate of the lesser of (i) ten percent per annum or (ii) at a rate
25 per annum that is equal to one per cent plus the prime rate as published by the board of governors
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1 of the federal reserve system in statistical release H.15 or any publication that may supersede it on
2 the date that the judgment is entered.

3 IT IS FURTHER ORDERED that the payments received by the state of Arizona will first
4 be applied to the restitution obligation. Upon payment in full of the restitution obligation,
5 payments will be applied to the penalty obligation.

6 IT IS FURTHER ORDERED that, pursuant to A.R.S. § 44-1974, upon application the
7 Commission may grant a rehearing of this Order. The application must be received by the
8 Commission at its offices within twenty calendar days after entry of this Order. Unless otherwise
9 ordered, filing an application for rehearing does not stay this Order. If the Commission does not
10 grant a rehearing within twenty calendar days after filing the application, the application is
11 considered to be denied. No additional notice will be given of such denial.

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

15 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
16 Order shall be deemed binding against any respondent under this Docket Number who is not
17 subject to this Order.

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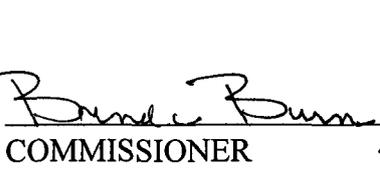
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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

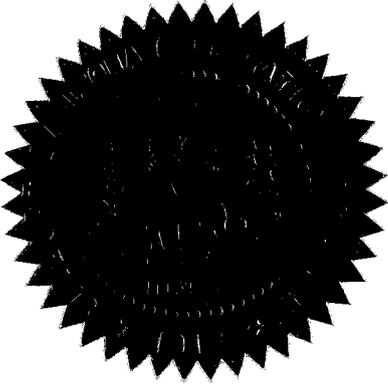

CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


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 21st day of March, 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.
(RJM)

Exhibit AParker Skylar Investor investment date, principal investment amount, and repayment amount

Investor	Investment Date	Original Investment Amount	Money Returned	Restitution Owed at Order Date
1	01/07/08	128,000.00		128,000.00
2	01/07/08	128,000.00		128,000.00
3	04/03/08	300,000.00		300,000.00
4	07/28/08	54,167.00		54,167.00
5	08/06/08	270,833.00		270,833.00
6	11/14/08	36,000.00		36,000.00
7	12/01/08	25,000.00		25,000.00
8	12/02/08	25,000.00		25,000.00
9*	12/03/08	100,000.00		100,000.00
9*	12/04/08	50,000.00		50,000.00
10	12/04/08	25,000.00		25,000.00
11	12/04/08	25,000.00		25,000.00
12*	12/21/08	50,000.00		50,000.00
13	01/14/09	50,000.00		50,000.00
14	01/14/09	50,000.00		50,000.00
15	01/15/09	50,000.00		50,000.00
9	01/21/09	25,000.00		25,000.00
16*	01/22/09	150,000.00		150,000.00
16*	04/08/09	100,000.00		100,000.00
12*	05/13/09	100,000.00		100,000.00
16*	05/15/09	100,000.00		100,000.00
17	05/19/09	100,000.00		100,000.00
* indicates investor who made multiple investments		Total Investments:		Total Owed at Order Date:
		1,942,000.00		1,942,000.00

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SERVICE LIST FOR PATRICK L. SHUDAK, PROMISE LAND PROPERTIES LLC, AND PARKER SKYLAR & ASSOCIATES, LLC.

Brian Schulman
Greenberg Traurig, LLP
2375 E. Camelback Rd. Suite 700
Phoenix, AZ 85016
Attorneys for Shudak and Promise Land

Parker Skylar & Associates, LLC
Attn: Roger Keller
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BEFORE THE ARIZONA CORPORATION COMMISSION

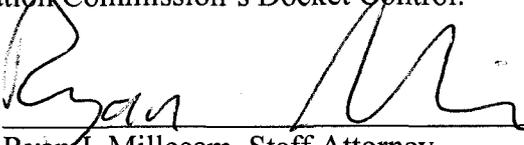
COMMISSIONERS

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

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,)
)
Respondent.)

DOCKET NO. S-20859A-12-0413
**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, and Order for Administrative Penalties, Re: Parker Skylar &
Associates, LLC was filed with the Arizona Corporation Commission's Docket Control.

Dated: 2/26/13 By: 
Ryan J. Millecam, Staff Attorney

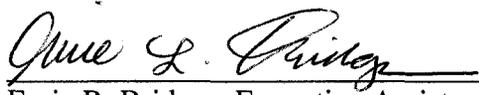
I hereby certify that I have this day served the foregoing document on all parties of record
in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

Brian Schulman
Greenberg Traurig, LLP
2375 E. Camelback Rd. Suite 700
Phoenix, AZ 85016
Attorneys for Shudak and Promise Land Properties, LLC

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Parker Skylar & Associates, LLC
Attn: Roger Keller
30 N. Cerro Alto Drive
Fountain Hills, AZ 85268
Respondent

Dated: 2/26/13

By: 
Emie R. Bridges, Executive Assistant