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AZ CORP COMMISSION
DOCKET CONTROL

5
6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7
8 In the matter of:

9 **OUT OF THE BLUE PROCESSORS, LLC**, an)
10 Arizona limited liability company, d/b/a Out of)
the Blue Processors II, LLC;

11 and

12 **MARK STEINER and SHELLY STEINER**,)
13 husband and wife.)

14 Respondents.)
15)

Docket No. S-20837A-12-0061

**ANSWER TO AMENDED NOTICE OF
OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES,
ORDER OF REVOCATION AND ORDER
FOR OTHER AFFIRMATIVE ACTION**

Arizona Corporation Commission
DOCKETED

OCT 10 2013

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18 Answering the allegations of the Amended Notice of Opportunity for Hearing on
19 Proposed Orders filed September 6, 2013 and served by Mail received in due course on
20 September 11, 2013 (the "Amended Notice"), Out of the Blue Processors LLC, directly and
21 doing business as Out of the Blue Processors II, LLC (collectively, "Blue") and its managers,
22 (collectively "Respondents"), admit, deny and allege as follows, (paragraph numbers
23 correspond to the numbers in the Amended Notice):

24
25 1. Respondents deny knowledge sufficient to form a belief regarding whether the
allegations of paragraph 1 are true and therefore deny the same. Federal preemption of

1 Arizona regulation of the acts of Blue and its managers may be established pursuant to
2 section 18 of the Securities Act of 1933, as amended (the "Act") and to the holding of the
3 Arizona Court of Appeals in, Arizona Corporation Commission v. Media Products, Inc., 158
4 Ariz. 463, 763 P.2d 527 (1988). Respondents respectfully suggest that until Respondents
5 have had an opportunity to demonstrate that their acts were not subject to the Commission's
6 jurisdiction, because of such federal preemption or otherwise, the investigative aspects of the
7 "matter" should be limited to a determination of whether the Commission has alleged facts
8 sufficient to form a reasonable basis for asserting its jurisdiction to investigate fraud or deceit
9 with respect to the acts of the Respondents. Respondent's assert the Commission failed to
10 allege such a factual base.
11

12 (a) Respondents did not solicit the interest of the unnamed person referred
13 to by the Commission as the "Arizona resident" and made no offer to sell, did not
14 solicit an offer to buy, and did not sell to the unnamed "Arizona resident" on or prior to
15 February 22, 2012, when the Commission issued its Temporary Orders (the
16 "Temporary Orders"). Respondents further allege that the person alleged by the
17 Commission to be an "Arizona resident" represented herself to Respondent Mark
18 Steiner to be calling from Seattle, Washington where she was there involved both in a
19 divorce proceeding and with the sale of a business enterprise, causing him reasonably
20 to believe she was at the time a resident of Washington State. Respondent Mark
21 Steiner received a phone call from that person (the "Seattle caller"), a total stranger,
22 who represented that an unidentified friend had given her a personal letter which
23 spoke of an investment opportunity in China and she was seeking information about
24 that opportunity. Respondent Mark Steiner provided the information for which he had
25

1 been asked, but made a clear statement that he would have to meet with the "Seattle
2 caller" before proceeding with any transaction. Respondent Mark Steiner was served
3 with the Temporary Orders at a time and place where a meeting with the "Seattle
4 caller" had been arranged for the purpose of evaluating her suitability as an investor
5 and to provide detailed information about Blue's investment opportunity, if she proved
6 to be a suitable investor, and before any such information could be exchanged. On
7 information and belief, Respondents allege the Commission is misinformed about the
8 state of residence of that person and also the genuineness of her seeking to invest in
9 Respondents' investment opportunity.
10

11 (b) Section 18 of the Act forbids states from regulating certain transactions
12 in securities as described in the Act, but permits states to investigate and deal with
13 "fraud and deceit." Respondents here assert that the Commission failed to allege facts
14 that show any basis whatever for asserting that Respondents are engaged in
15 fraudulent or deceitful activities prior to the issuance of the Amended Notice.
16

17 (c) Respondents' Answer and the Subpoena response of Blue were based on
18 Respondents' belief (i) that Section 18 of the Act prohibits any attempt by the
19 Commission to regulate Respondents' transactions and (ii) that no fraud or deceit had
20 occurred prior to the service on Respondents of the Temporary Orders; that no fraud
21 or deceit has since occurred or will occur in connection with the activities of Blue.
22 Respondents assert, therefore, that those aspects of the Commission's investigation
23 which seek to establish facts related to the conformance of Respondent's acts to
24 regulatory provisions of the Arizona Securities Act and the Commission's regulations
25 were premature and, being premature destroyed the jurisdictional basis for all that has

1 followed. Specifically, Respondents allege that the information on the basis of which
2 the Commission entered the Temporary Orders was insufficient to establish even a
3 reasonable suspicion of fraud or deceit. In the absence of some unspecified
4 presumption of evil based on the amounts discussed and the involvement of persons in
5 foreign nations, no fact alleged in the Commission's Temporary Orders suggests actual
6 or statutory fraud had occurred. The law does not imply fraud whenever large sums of
7 money and substantial returns on investment are involved or when the transactions
8 discussed are with business enterprises, whether or not state owned. All information
9 obtained thereafter was obtained by trick, device and bunko, based on false,
10 fraudulent and knowingly unlawful by the Securities Division's enforcement personnel
11 involved and should, therefore, be suppressed.
12

13
14 (d) In the interest of full disclosure and cooperation with the Commission,
15 Respondents have submitted in response to the Commission's February 22, 2012
16 Subpoena, further subpoenas and requests for information, detailed information
17 demonstrating that a document furnished to the "Seattle caller" and described as an
18 executive summary was a true and correct statement of actual facts. Respondent
19 incorporates here their Answers at paragraphs 24, 33, 34 and 35 of this Answer.
20 Respondents believe that information should have satisfied the Commission that no
21 fraud or deceit is, was or will be involved in connection with Blue's investment
22 opportunity.
23

24 2. Respondents admit the allegations of paragraph 2 of the Amended Notice, except
25 deny knowledge of the reference "CRD# 1834102" and therefore deny any portion of the
allegation growing from the meaning of that reference.

1 3. Respondents admit the allegations of paragraph 3 of the Amended Notice.

2 4. Respondents admit the allegations of paragraph 4 of the Amended Notice and note
3 that the collective reference is adopted in these Answers.

4 5. Respondents Mark and Shelly Steiner admit that they are the "managers" of Blue
5 within the meaning of A.R.S. §29-601 et seq. Respondents deny, however, that Respondents
6 are "members" of Blue in the sense of having a material interest in the capital or profits of
7 Blue.
8

9 6. Respondents admit the allegations of paragraph 6 of the Amended Notice.

10 7. Respondents acknowledge the collective reference and have adopted it in this
11 Answer to the Amended Notice.

12 8. Respondents admit that Shelly Steiner ("Respondent Spouse") is the wife of
13 Respondent Mark Steiner (hereafter "Respondent Steiner") and deny each other allegation of
14 paragraph 8 of the Amended Notice.
15

16 9. The statute speaks for itself at such time as a liability is established.

17 10. Respondents deny knowledge sufficient to form a belief regarding whether the
18 allegations of paragraph 10 are true and therefore deny the same.

19 11. Respondents deny unequivocally that any project discussed by or on behalf of
20 Respondents involved firearms or ammunition or the retail sale of beauty and other consumer
21 products. Respondents allege that the allegation regarding firearms is an example of the
22 dishonest and knowingly false nature of some of Petitioner's allegations in this matter.
23 Respondents admit having relationships with Chinese business entities engaged in the
24 development of infrastructure projects in China and throughout the world, specifically and
25 currently, in Nigeria and Uganda on the African continent, and longer term throughout the

1 African and South American continents, specifically in Ecuador in South America, but deny
2 knowledge sufficient to form a belief regarding whether the other allegations of paragraph 11
3 are true and therefore deny the same. Respondent adopts by reference any portion of its
4 Answer to the Temporary Orders relevant to the allegations of paragraph 11.
5

6 12. Respondents admit having relationships with Chinese business entities engaged in
7 the development of infrastructure projects in China and throughout the world, specifically and
8 currently, in Nigeria and Uganda on the African continent, and longer term throughout the
9 African and South American continents, specifically in Ecuador in South America.

10 13. Respondents admit furnishing copies of its Operating Agreement to investors, but
11 deny information sufficient to form a belief as to the truth of the allegation with respect to a
12 specific Operating Agreement and therefore deny the same.
13

14 14. Respondents admit that the Operating Agreement referred to by Petitioner as the
15 "Blue I Operating Agreement contained a provision essentially the same as that purportedly
16 quoted by Petitioner, and allege that the actual document speaks for itself. Respondents deny
17 every other allegation of paragraph 14.

18 15. Respondents admit that a document identified as a "Private Placement Agreement"
19 was dated on or about March 25, 2008 between Blue and Lunsford Consulting LLC
20 ("Lunsford") and that Respondent Steiner executed the same on behalf of Blue. Respondents
21 deny every other allegation of paragraph 15.
22

23 16. Respondents allege that the document identified as a Private Placement
24 Agreement speaks for itself and deny every other allegation of paragraph 16 of the Amended
25 Notice.

17. Respondents admit the allegations of paragraph 17 of the Amended Notice.

1 18. Respondents admit that the consulting fee is to be paid to Lunsford upon project
2 funding and as project funding occurs. Respondents admit that execution of an equipment
3 purchase agreement is an essential step in achieving project funding, but deny that the
4 execution of such an agreement will accomplish project funding for all projects, many of which
5 involve more than equipment purchases and all of which require approval, after equipment
6 purchase agreement has been achieved, by the Chinese Bank that is to fund the project.

8 19. Respondents admit the allegations of paragraph 19 of the Amended Notice.

9 20. Respondents deny knowledge sufficient to form a belief regarding whether the
10 allegations of paragraph 20 are true and therefore deny the same, except that Respondents
11 admit that, if the actual project cost of the Kogi State, Nigeria is equal to the estimated project
12 cost and if the entire project cost is funded initially, rather than in phases, the calculations of
13 Petitioner set forth in subparagraphs a, b, and c of paragraph 20 of the Amended Notice
14 accurately states Respondents understanding of how the Blue I investors are to be paid.

16 21. Respondents admit the allegations of paragraph 21 of the Amended Notice, but
17 note that under preemptive provisions of federal law, a manager of a limited liability company
18 may offer securities of the company without being a broker-dealer.

19 22. Respondents deny the allegations of paragraph 22 of the Amended Notice. To
20 avoid misunderstandings and semantic arguments intended to trap the unwary, Respondents
21 admit that Respondent Steiner told investors that Blue would lend to Lunsford monies to
22 enable Lunsford to pay all its business expenses which would include, but not be limited to,
23 travel to China, Nigeria, Uganda, Ecuador and other places where infrastructure projects were
24 being investigated for approval or, being tentatively approved, were being further investigated
25 and documented in a manner appropriate to each. To the extent that the allegations of

1 paragraph 22 of the Amended Notice imply a more limited use of the Blue monies, Blue denies
2 the same.

3 23. Respondents deny the allegations of paragraph 23 of the Amended Notice.
4 Respondents further allege that the activities and payments described paragraph 23 of the
5 Amended Notice constituted lawful activities of the manager of a limited liability company
6 offering its securities pursuant to a federal exemption available under the preemptive law of
7 the United States.
8

9 24. Respondents adopt by reference each and all of Respondents Answers to
10 Petitioners Temporary Orders at paragraphs 9 through 15 and except as admitted thereby,
11 deny each and every allegation of paragraphs 24 through 28 of the Amended Notice.
12

13 29. Respondents admit the allegations of paragraph 29 of the Amended Notice.

14 30. Respondents allege that the Operating Agreement of Blue II speaks for itself.
15 Respondents admit the allegation of subparagraph a of paragraph 30 of the Amended Notice,
16 but deny deny the allegations of subparagraph b of that paragraph. Respondents admit the
17 general accuracy of the allegations of subparagraphs c through i of the Amended Notice, but
18 reassert that the document speaks for itself and the specific provisions allegedly quoted should
19 be read in the context of the entire document and the transactions proposed.
20

21 31. Respondents admit the allegations of paragraph 31 of the Amended Notice.

22 32. Respondents admit the allegations of paragraph 32 of the Amended Notice.

23 33. Respondents admit that Respondent Steiner delivered a Lunsford executive
24 summary to a Washington resident who represented herself to be named Margo Melamo; and
25 admit generally that the executive summary described the relationships of Lunsford with
executives of the Chinese business enterprises involved in general terms as alleged in

1 paragraph 33 of the Amended Notice. Respondents further allege that each of the statements
2 described in paragraph 33 were true when made and, with the exception of (i) specific dates
3 relating to the receipt of revenues and (ii) the continued applicability of specific projects
4 following further investigation by the Chinese enterprises with the assistance and facilitative
5 efforts of Lunsford, the statements remain true today. Respondents further allege that
6 Respondents have continued to communicate with investors regarding the status of the
7 projects identified in the executive summary and additional projects which they have identified
8 and obtained approvals of various levels of commitment from the Chinese enterprises with
9 which Lunsford is continuing to work.
10

11 34. Respondents admit the allegations of paragraph 34 of the Amended Notice, if the
12 allegation is with respect to the person identified as Washington resident Margo Mallamo and
13 not some other person and subject to accuracy regarding the specific date on which the
14 pseudo Arizona resident received the communication.
15

16 35. Respondents admit the allegations of paragraph 35 of the Amended Notice.
17 Respondents allege that no offer to sell or solicitation of an offer to buy was made to the
18 pseudo Arizona resident at any time.
19

20 36 – 37. Respondents admit the allegations of paragraphs 36 and 37 of the Amended
21 Notice.
22

23 38. Respondents deny each allegation of paragraph 38 of the Amended Notice, but
24 allege that the investment opportunity presented by Blue is unique and had and has a high
25 level of certainty of successful outcome and, due to the open ended assurance of Blue
participating in projects not identified at the time the executive summary was prepared, a
substantial possibility of unusual investment returns over time.

1 39. Respondents deny the allegations of paragraph 39 of the Amended Notice.
2 Respondents allege that the true statement was that all investor monies would be spent in
3 paying the actual ordinary and appropriate business expenses of Lunsford as a
4 finder/facilitator, including, but not limited to travel and entertainment expenses to China,
5 Nigeria, Uganda, Ecuador and other places where projects may be located, and for the
6 ordinary and appropriate business expenses of Blue, such as, but not limited to, accounting
7 expense.
8

9 40. Respondents admit the allegation of paragraph 40 of the Amended Notice.
10 Respondents allege that the reason for that truth is that no project has reached the funding
11 stage, although several are believed to be close to it.
12

13 41. Respondents admit the allegation of paragraph 41, but note that Respondent
14 Steiner is the manager of Blue, a manager managed limited liability company whose duties
15 involve the overall management of the company and are not limited to raising money or selling
16 Blue's member interests and, as such, he may offer and sell investment interests in Blue
17 without violating the Arizona Securities Act or federal securities law which may preempt the
18 Arizona law.

19 42. Respondents admit the allegations of paragraph 42 of the Amended Notice.

20 43. Respondents admit the allegations of paragraph 43 of the Amended Notice.

21 44. Respondents admit the allegations of paragraph 44 of the Amended Notice.

22 45. Respondents deny the allegations of paragraph 45 of the Amended Notice.

23 46. Respondents admit that Respondent Steiner is and was not registered as alleged,
24 but denies that such registration was required and deny each of the other allegations of
25 paragraph 46 of the Amended Notice.

1 47. Respondents deny the allegations of paragraph 47 of the Amended Notice.

2 48. Respondents deny each of the allegations of paragraph 48 of the Amended Notice.

3 WHEREFORE, having truthfully and fully Answered the allegations of the Amended
4 Notice, and having requested a hearing, request that the Division, and if not the Division, then
5 the Commission dismiss this matter without granting any relief to Petitioner.
6

7 DATED: October 11, 2013.

8 Respectfully submitted,

9 

10 Arthur P. Allsworth
11 Attorney for Respondents

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13
14
15
16 VERIFICATION

17 Mark Steiner, being first duly sworn, deposes and says that he is one of the persons
18 described as a Respondent in the foregoing Answer, that he has read the foregoing Answer
19 carefully, that he knows the statements set forth therein to be true to the best of his
20 knowledge, except as to any statements based on knowledge and belief.

[To be supplied.]

21 _____
Mark Steiner

22 SUBSCRIBED AND SWORN TO before me by Mark Steiner, whose identity was
23 established to my satisfaction, on this ____ day of October, 2013.

24 _____
Notary Public

25 My commission expires:

1 ORIGINAL filed by HAND DELIVERY on October 11, 2013
2 addressed to:

3 :
4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix AZ 85007

8 Copy served by Mail on October 11, 2013
9 addressed to:

10 Stephan J. Womack
11 Securities Division
12 Arizona Corporation Commission
13 1300 West Washington 3rd Floor
14 Phoenix AZ 85007

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