

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
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SUSAN BITTER SMITH

AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

In the matter of:)
)
 Todd R. Nuttall, a married man;)
)
 Magdalena Homes, L.L.C., an Arizona)
 limited liability company;)
)
 Rotall Marketing Group L.L.C., an Arizona)
 limited liability company, D/B/A Direct Rev)
 Millionaire;)
)
 Todd Robert Homes, a dissolved Arizona)
 Corporation;)
)
)
 Respondents.)

DOCKET NO. S-20901A-13-0432

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 respondents TODD R. NUTTALL, MAGDELANA HOMES L.L.C., ROTALL MARKTING GROUP L.L.C. D/B/A DIRECT REV MILLIONAIRE, and TODD ROBERT HOMES 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 alleges TODD R. NUTTALL is a person controlling MAGDALENA HOMES L.L.C. and TODD ROBERT HOMES 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 MAGDALENA HOMES L.L.C. and TODD ROBERT HOMES.

Arizona Corporation Commission
DOCKETED

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I.

JURISDICTION

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

5 II.

6 **RESPONDENT**

7 2. TODD R. NUTTALL (“NUTTALL”) has at all relevant times been an Arizona
8 resident. Though presently married, NUTTALL was a single man at all relevant times. NUTTALL
9 has not been registered by the Commission as a securities salesman or dealer.

10 3. MAGDALENA HOMES, L.L.C. (“MH”) was at all relevant times an Arizona limited
11 liability company with its principal office located in Phoenix, Arizona. According to the records of the
12 Arizona Corporation Commission, Corporation Division, NUTTALL was, at all relevant times, the
13 sole member and manager of MH. MH has not been registered by the Commission as a securities
14 salesman or dealer.

15 4. ROTALL MARKETING GROUP, L.L.C. D/B/A DIRECT REV MILLIONAIRE
16 (“DRM”) was at all relevant times an Arizona limited liability company with its principal office
17 located in Phoenix, Arizona and at the same office suite as MH. According to the records of the
18 Arizona Corporation Commission, Corporation Division, NUTTALL was, at all relevant times, a
19 manager and member of DRM. DRM has not been registered by the Commission as a securities
20 salesman or dealer.

21 5. TODD ROBERT HOMES, INC. (“TRH”) was at all relevant times an Arizona
22 corporation with its principal office located in Phoenix, Arizona and at the same office suite as MH.
23 According to the records of the Arizona Corporation Commission, Corporation Division, NUTTALL
24 was, at all relevant times, the president of TRH. TRH was administratively dissolved on September 19,
25 2008. TRH has not been registered by the Commission as a securities salesman or dealer.

26 6. NUTTALL, DRM, MH, and TRH may be referred to as “Respondents.”

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III.
FACTS

A. Magdalena Homes

7. From at least as early as October, 2007 to at least as recently as July, 2008, Respondents MH, NUTTALL, and TRH offered and sold securities within and/or from Arizona in the form of notes.

8. Though the notes were variously executed in the names of both TRH and MH, all investments financed the same endeavor described by a document titled "Confidential Private Placement Memorandum" (the "PPM") of Magdalena homes dated October 8, 2007.

9. The PPM was provided to all offerees before they invested.

10. The PPM describes the issue of 300, \$5,000 notes bearing annual interest of 30% with a maturity date of 24 months.

11. The PPM instructed offerees to make checks payable to Magdalena Homes, L.L.C. and to send investment documents and the investment funds to Magdalena Homes, L.L.C. in Phoenix.

12. According to the PPM, MH "is in the business of construction management, land acquisition, and residential development, specializing in single family detached homes."

13. A business plan attached to the PPM describes the proposed project as Lynn Haven Estates, a single family residential subdivision containing 50 detached homes located on a 10 acre parcel of land on the northeast corner of McClintock and the SanTan Freeway.

14. The PPM further states that "[a]ll decisions with respect to the management of the Company will be made exclusively by the Principal Managers of the LLC. The Note Holders do not have the right or power to take part in the management of the Company."

15. According to the PPM, NUTTALL was a general partner of MH.

16. NUTTALL met note purchasers through a series of workshops held in Arizona and California. In addition, NUTTALL met at least one note purchaser through social contacts.

1 17. NUTTALL, TRH and/or MH sold a total of \$174,500 securities to eight investors
2 located within and outside the state of Arizona.

3 18. All of the sales of securities were concluded by NUTTALL on behalf of MH and TRH
4 while in the state of Arizona.

5 19. At all relevant times, NUTTALL was signatory to the bank accounts for TRH and MH.

6 20. To date, none of the investors have been repaid.

7 21. The PPM stated in part that there was a general partner of Magdalena homes who "has
8 been in both Residential and Commercial Development in Arizona since 1975. As well as being a
9 major commercial developer here in the valley with over thirty, multi-million dollar commercial
10 projects under his belt, he also holds a strong foothold in the residential market, building
11 approximately 300 homes per year. As one of the largest privately held residential builder (sic) in
12 Arizona, his credibility and list of projects stand out above the rest."

13 22. In fact and unknown to at least one investor, the person referred to as a general partner
14 of MH had no affiliation with the business.

15 23. In reality, the sole general partner of MH was substantially less experienced in property
16 development, having created no residential subdivisions on his own.

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18 **B. Direct Rev Millionaire**

19 24. From at least as early as April, 2008 to at least as recently as June, 2009, Respondents
20 NUTTALL and DRM sold securities within and/or from Arizona in the form of notes.

21 25. NUTTALL and DRM, doing business as Direct Rev Millionaire, sold \$59,000 in notes
22 to eleven Arizona and out of state investors. The investors have been repaid a total of \$8,200. The
23 notes bore annualized interest rates of between about 20% and 900%.

24 26. The investors were social acquaintances of NUTTALL.

25 27. The investments were to be used to finance the startup costs of a marketing training
26 website.

1 IV.

2 VIOLATION OF A.R.S. § 44-1841

3 (Offer or Sale of Unregistered Securities)

4 28. From on or about October, 2007 Respondents NUTTALL, MH and TRH offered or
5 sold securities in the form of notes, within or from Arizona.

6 29. From on or about April, 2008, Respondents NUTTALL and DRM offered or sold
7 securities in the form of notes, within or from Arizona.

8 30. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
9 Securities Act.

10 31. This conduct violates A.R.S. § 44-1841.

11 V.

12 VIOLATION OF A.R.S. § 44-1842

13 (Transactions by Unregistered Dealers or Salesmen)

14 32. Respondents offered or sold securities within or from Arizona while not registered as a
15 dealer or salesman pursuant to Article 9 of the Securities Act.

16 33. This conduct violates A.R.S. § 44-1842.

17 VI.

18 VIOLATION OF A.R.S. § 44-1991

19 (Fraud in Connection with the Offer or Sale of Securities)

20 34. In connection with the offer or sale of securities within or from Arizona, Respondents
21 NUTTALL, TRH and MH directly or indirectly: (i) employed a device, scheme, or artifice to defraud;
22 (ii) made untrue statements of material fact or omitted to state material facts that were necessary in
23 order to make the statements made not misleading in light of the circumstances under which they were
24 made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate
25 as a fraud or deceit upon offerees and investors. NUTTALL's, MH's and TRH's conduct includes,
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1 but is not limited to, representing to investors participation of a general partner who had no actual
2 involvement with the endeavor.

3 35. NUTTALL directly or indirectly controlled MH and TRH within the meaning of
4 A.R.S. § 44-1999. Therefore NUTTALL is jointly and severally liable under A.R.S. § 44-1999 to the
5 same extent as MH and TRH for their violations of A.R.S. § 1991.

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7 **VII.**

8 **REQUESTED RELIEF**

9 The Division requests that the Commission grant the following relief:

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

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

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

17 4. Order any other relief that the Commission deems appropriate.

18 **VIII.**

19 **HEARING OPPORTUNITY**

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

21 **If Respondents request a hearing, the requesting respondent must also answer this Notice.** A
22 request for hearing must be in writing and received by the Commission within 10 business days after
23 service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the
24 request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
25 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
26 Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

1 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
2 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
3 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
4 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
5 Opportunity for Hearing.

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

12 **IX.**

13 **ANSWER REQUIREMENT**

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

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

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

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

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

8 Dated this 10th day of December, 2013.

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11 Mark Dinell
12 Assistant Director of Securities
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