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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2014 MAR 14 A 9:39  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

**DOCKETED**

MAR 14 2014

**ORIGINAL**

DOCKETED BY

In the matter of:

JONATHON JAMES MURRAY and  
WENDY LYNN MURRAY, husband and  
wife;

Respondents.

DOCKET NO. S-20883A-13-0112

**SECURITIES DIVISION'S POST-HEARING  
BRIEF**

**Hearing Dates: January 6-7, 2014**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its Post-Hearing Brief ("Brief") with respect to the administrative hearing held on January 6-7, 2014. This Brief is supported by the following Memorandum of Points and Authorities.

**MEMORADUM OF POINTS AND AUTHORITIES**

**I. Procedural Background**

On April 23, 2013, the Division filed a Notice of Opportunity for Hearing ("Notice") against Jonathon James Murray ("Murray"), alleging multiple violations of the registration and antifraud provisions of the Arizona Securities Act ("Securities Act") in connection with the offer and sale of securities. Murray's spouse, Wendy Lynn Murray ("Respondent Spouse") was also named in this action solely for purposes of determining the liability of the marital community. Murray and Respondent Spouse filed a request for a hearing on June 24, 2013, and their answer on September 9, 2013. An administrative hearing in this matter was held on January 6-7, 2014. Respondent Spouse did not appear at the administrative hearing.

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1 **II. Jurisdiction**

2 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
3 Constitution and the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*

4 **III. Facts**

5 **A. Background**

6 Murray, a US and Canadian citizen, is and was at all relevant times, married to Respondent  
7 Spouse.<sup>1</sup> Murray began buying and selling residential real estate while living in Canada, then  
8 moved to Arizona in 2011.<sup>2</sup>

9 This matter involves thirteen individuals that invested with Murray. In total, these  
10 investors invested \$772,500 with Murray, and only \$35,183 has been repaid.<sup>3</sup> The majority of  
11 investors have received no payments.<sup>4</sup> During the relevant period, Murray was not licensed in  
12 Arizona as a securities salesman or dealer, nor were his offerings registered in Arizona.<sup>5</sup>

13 Ten of the investors at issue were residents of Canada at the time of investing.<sup>6</sup> Several  
14 Canadian investors, including John Collins, Nischal Ram, Sergey Reger, Randall Flowerdew,  
15 William Cornish, Eric Popma, Jeff Coleman, Rebecca Warburton and Soda Cajee, attended  
16 seminars in Arizona prior to investing at which the investment opportunity was presented to them  
17 by Murray.<sup>7</sup> Another Canadian investor, Brian Guenther, was contacted via email by Murray  
18 about the investment opportunity while Murray was in Arizona. After he decided to invest, Mr.  
19

20 <sup>1</sup> Exs. S-3 at pp. 9, 31, S-21 at pp. 28-29; HT Vol. II, p. 241, ln. 18 – p. 245, ln. 19

21 <sup>2</sup> Ex. S-3 at pp. 10, 12-14

22 <sup>3</sup> Exs. S-3 at pp. 40-42, S-5, S-6, S-8, S-9, S-11, S-21 at p. 70, S-26 at ACC000295, S-27, S-33, S-35, S-36, S-38, S-41,  
S-50, S-51, S-56, S-57, S-60, S-61, S-63, S-65, S-66, S-79; H.T. Vol. 1, p. 27, lns. 8-9, p. 103, ln. 1-8; p. 119, ln. 25 –  
p. 120, ln. 12, p. 137, ln. 12-22; p. 143, ln. 6-10, p. 144, ln. 21 – p. 145, ln. 3

23 <sup>4</sup> Exs. S-3 at pp. 63 – 65, S-26, S-27, S-32, S-38; H.T. Vol. 1, p. 31, ln. 8-13, p. 37, ln. 3-6, p. 71, ln. 10-15, p. 103, ln.  
1-8; p. 137, ln. 12-22; p. 144, ln. 21 – p. 145, ln. 1-3; p. 176, ln. 4-8, p. 181, ln. 4 – p. 182, ln. 3; H.T. Vol. 2, p. 228, ln.  
13-17, p. 231, ln. 17-20, p. 280, ln. 15-17, p. 287, ln. 8-11, p. 296, ln. 6-11, p. 306, ln. 17-20

24 <sup>5</sup> Exs. S-1(a), S-3 at pp. 65-66, S-4 at Exhibit A, request 10, S-12, response to request 10

25 <sup>6</sup> Exs. S-6 at ACC001877-1879, 1886-1899; S-26, S-8, S-38, S-41, S-51, S-60, S-63, S-79; H.T. Vol. 1, p. 24, ln. 12-  
17, p. 115, ln. 13 – p. 116, ln. 6, p. 140, ln. 17 – p. 141, ln. 4, p. 163, ln. 20 – p. 164, ln. 9; H.T. Vol. 2, p. 296, ln. 12-  
13, p. 297, ln. 24 – p. 298, ln. 2

26 <sup>7</sup> Exs. S-3 at pp. 59-60, S-26 at ACC000297, S-33, S-38, S-41, S-52, S-79; H.T. Vol. 1, p. 16, ln. 16-25, p. 117, ln. 13  
– p. 119, ln. 24; H.T. Vol. 2, p. 262, ln. 19 – p. 263, ln. 1, p. 278, ln. 3-8, p. 283, ln. 17-25, p. 284, ln. 16-22, p. 293, ln.  
7-15, 296, ln. 14-17, p. 298, ln. 2 – p. 299, ln. 3

1 Guenther sent his investment funds to Murray in Arizona.<sup>8</sup> The remaining three investors were  
2 Arizona residents at the time they invested.<sup>9</sup>

3 **B. Fix and Flip Investors**

4 From March 2011 until April 2012, Murray offered and sold securities in or from Arizona  
5 to ten investors, involving the purchase, rehabilitation, and resale (“fix and flip”) of residential real  
6 estate located in Arizona (“Fix and Flip Investors”).<sup>10</sup> Murray entered into Joint Venture or  
7 Partnership Agreements (“Agreements”) with the Fix and Flip Investors.<sup>11</sup> The Agreements had  
8 one year terms.<sup>12</sup> The Agreements specifically designate Murray as the “general partner”, while  
9 the investor is the “limited partner”.<sup>13</sup>

10 Under the terms of the Agreements, Fix and Flip Investors supplied a fixed amount of  
11 money to be used by Murray for the purchase, rehabilitation, and sale associated with a residential  
12 investment property. Specifically, Murray was required to purchase investment property, obtain  
13 financing at 80% loan to value, handle the rehabilitation work, update the investor, and sell the  
14 property for a profit to be shared on a percentage basis with the investor.<sup>14</sup> Murray is described as  
15 the “general partner” while the investor is the “limited partner”, and all management roles –  
16 finding the property, financing the property, renovating the property, and selling the property, are  
17 the responsibility of Murray, not the investor.<sup>15</sup> Investors did not have an active role in the  
18 investment, and only supplied the cash.<sup>16</sup> The property that was the subject of the investment was  
19 not identified by Murray at the time of investment.<sup>17</sup>

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21 <sup>8</sup> Ex. S-62; H.T. Vol 1, p. 143, ln. 6-16

22 <sup>9</sup> Exs. S-60, S-79; H.T. Vol. 1, p. 65, ln. 21 – p. 66, ln. 1, p. 68, ln. 9-11, p. 98, ln. 20 – p. 99, ln. 25

23 <sup>10</sup> Exs. S-6 at ACC001877-1882, 1886-99, S-8, S-9, S-11, S-27 at ACC000052-54, S-33, S-35, S-38, S-41, S-51, S-60,  
S-65, S-79

24 <sup>11</sup> *Id.*

25 <sup>12</sup> *Id.*

26 <sup>13</sup> Exs. S-6 at ACC001877-1882, 1886-99, S-8, S-9, S-11, S-27 at ACC000052-54, S-33, S-35, S-38, S-41, S-51, S-60,  
S-65

<sup>14</sup> *Id.*

<sup>15</sup> Exs. S-6 at ACC001877-1879, S-27 at ACC000052-54, S-38, S-60

<sup>16</sup> Ex. S-21 at p. 18

<sup>17</sup> Ex. S-26 at ACC000295; H.T. Vol. 1, p. 30, ln. 1-4, p. 67, ln. 21 – 25, p. 122, ln. 12-22, p. 168, ln. 12-23; H.T. Vol.  
2, p. 280, ln. 18-22, p. 287, ln. 20 – p. 288, ln. 3

1 **C. Note Investors**

2 From February 2012 until August 2012, Murray offered and sold promissory notes to three  
 3 investors (“Note Investors” or “Note Investments”).<sup>18</sup> None of the three individuals had invested  
 4 with Murray prior to the Note Investments.<sup>19</sup> There is no evidence that any of them had invested  
 5 in a business involving residential real estate prior to the Note Investment with Murray.<sup>20</sup> The  
 6 Note Investments were not related to any specific property that was being flipped.<sup>21</sup> Murray used  
 7 Note Investors’ funds to fund general expenses such as office expenses and “properties”, and Note  
 8 Investors were told that Murray was generally seeking capital for the fix and flips they were acting  
 9 as a “hard money lender” for several properties.<sup>22</sup>

10 The notes issued by Murray were titled “Promissory Note” or “Installment Note”.<sup>23</sup> Two  
 11 of the Note Investments contained one year terms, and provided between 18% - 20% annual  
 12 interest.<sup>24</sup> These two Note Investments also contained personal guarantees by Murray.<sup>25</sup> The third  
 13 Note Investment contained a three month term that provided 18% annual interest, and required  
 14 monthly interest payments and repayment at the end of the term.<sup>26</sup>

15 The Note Investors had discussions with Murray about the Note Investments with the  
 16 understanding it was an investment opportunity, and Murray even described these note-holders as  
 17 “investors.”<sup>27</sup>

18 **D. Fraud**

19 1. All investors: undisclosed judgments, bankruptcy orders and civil litigation

20 As of June 2010, Murray had a civil judgment entered against him for over \$69,000 in  
 21 Canada following a lawsuit by one of his Canadian investors (“June 2010 Judgment”). The June  
 22

23 <sup>18</sup> Exs. S-3 at pp. 44-45, S-6, S-10, S-61, S-63, S-79; H.T. Vol. 2, p. 293, ln. 16 – p. 296, ln. 5

<sup>19</sup> H.T. Vol. 1, p. 100, ln. 25, p. 101, ln. 2

<sup>20</sup> E.g. H.T. Vol. 1, p. 99, ln. 2-7, p. 149, ln. 2-9.

<sup>21</sup> Ex. S-3 at p. 45

<sup>22</sup> Ex. S-3 at pp. 45-46, S-62; H.T. Vol. 1, p. 109, ln. 23 – p. 110, ln. 13, p. 113, ln. 4-7

<sup>23</sup> Exs. S-3 at pp. 44-45, S-6, S-10, S-61, S-63, H.T. Vol. 2, p. 293, ln. 16 – p. 296, ln. 5

<sup>24</sup> Exs. S-6 at ACC001867.01; S-61, S-63

<sup>25</sup> *Id.*

<sup>26</sup> Ex. S-10; H.T. Vol. 1, p. 101, ln. 10 – p. 102, ln. 2

<sup>27</sup> E.g. Ex. S-3, p. 45, 59, 61; H.T. Vol. 1, p. 99, ln. 13 – p. 100, ln. 24, p. 141, ln. 14-21.

1 2010 Judgment was recorded in Arizona in January 2012.<sup>28</sup> Murray failed to disclose the June  
 2 2010 Judgment to any of the investors at issue in this hearing, all of which invested after it was  
 3 entered.<sup>29</sup>

4 Murray had another Canadian judgment entered against him on July 13, 2011 by another  
 5 investor for over \$115,000 (“July 2011 Judgment”), which lead to that investor petitioning the  
 6 Supreme Court of British Columbia on January 4, 2012, for a bankruptcy order against Murray.<sup>30</sup>  
 7 Murray did not disclose the July 13, 2011 Judgment to Jeff Coleman, Michael Martin, Randall  
 8 Flowerdew, Rebecca Warburton, Nischal Ram, Bill Cornish, Eric Popma, John Collins, Jason  
 9 Baker, Brian Guenther, and Kymberly Meyer, all of which invested after its entry.<sup>31</sup> The Supreme  
 10 Court of British Columbia entered a bankruptcy order against Murray on May 9, 2012 (“Canadian  
 11 Bankruptcy Order”).<sup>32</sup> Mr. Guenther and Ms. Meyer, both Note Investors, invested after the  
 12 Canadian Bankruptcy Order was entered, but the Canadian Bankruptcy Order was not disclosed to  
 13 either of them prior to investing.<sup>33</sup>

14 Not only were these judgments and the Canadian Bankruptcy Order not disclosed to  
 15 investors, but Murray affirmatively represented to Mr. Collins and Mr. Baker in their Agreements  
 16 in March and April 2012, respectively, that Murray was not subject to any bankruptcy  
 17 proceedings.<sup>34</sup> The Canadian bankruptcy was pending at that time.<sup>35</sup> Murray also affirmatively  
 18 represented to Mr. Baker in April 2012 that there was no pending or threatened litigation against  
 19 Murray.<sup>36</sup> However, a former investor had a pending lawsuit against Murray in Canada that was  
 20

21 <sup>28</sup> Ex. S-3 at pp. 83-84, S-14, S-82; H.T. Vol. 1, p. 182, ln. 17 – p. 186, ln. 5

22 <sup>29</sup> Ex. S-79; H.T. Vol. 1, p. 32, ln. 6-11, p. 72, ln. 20 – p. 73, ln. 6, p. 106, ln. 2-19, p. 125, ln. 21 – p. 126, ln. 2, p. 147,  
 ln. 2-11; p. 182, ln. 9-12; H.T. Vol. 2, p. 228, ln. 22 – p. 229, ln. 13, p. 238, ln. 25 – p. 239, ln. 3, p. 281, ln. 22 – 25, p.  
 23 288, ln. 14-17, p. 296, ln. 18-22, p. 306, ln. 24 – p. 307, ln. 2

24 <sup>30</sup> Exs. S-3 at pp. 86-89, S-16, S-74, S-75; H.T. Vol. 1, p. 186, ln. 6 – p. 189, ln. 5, p. 190, ln. 3 – p. 191, ln. 7

25 <sup>31</sup> Exs. S-6 – S-11, S-79, S-33, S35 – S-36, S-38, S-51, S-56, S-60 – S-61, S-63, S-65 – S-66, S-79; H.T. Vol. 1, p. 32,  
 ln. 6-11, p. 72, ln. 20 – p. 73, ln. 6, p. 106, ln. 2-19, p. 125, ln. 21 – p. 126, ln. 2, p. 147, ln. 2-11; H.T. Vol. 2, p. 228,  
 ln. 22 – p. 229, ln. 13, p. 281, ln. 22 – 25, p. 288, ln. 14-17, p. 296, ln. 18-22, p. 306, ln. 24 – p. 307, ln. 2

26 <sup>32</sup> Exs. S-3 at p. 89, S-75

<sup>33</sup> H.T. Vol. 1, p. 106, ln. 2-19, p. 147, ln. 2-11

<sup>34</sup> Exs. S-6 at ACC001886-1896, S-11, S-33; H.T. Vol. 1, p. 31, ln. 14 – p. 32, ln. 5; p. 36, ln. 12 – p. 37, ln. 3

<sup>35</sup> Exs. S-3 at pp. 86-89, S-16, S-74, S-75; H.T. Vol. 1, p. 186, ln. 6 – p. 189, ln. 5, p. 190, ln. 3 – p. 191, ln. 7

<sup>36</sup> Exs. S-65, S-11; H.T. Vol. 1, p. 71, ln. 20 – p. 72, ln. 19

1 originally filed in November 2011, and which had been amended on the same day Mr. Baker  
2 invested.<sup>37</sup>

3 Finally, on the same day Murray filed a bankruptcy petition in the United States  
4 Bankruptcy Court in the District of Arizona, August 16, 2012, (“US Bankruptcy”), he entered into  
5 a Note Investment with Kymberly Meyer and accepted her investment funds.<sup>38</sup> Murray failed to  
6 disclose the US Bankruptcy filing to Ms. Meyer, and Ms. Meyer testified she would not have  
7 invested had Murray disclosed the US Bankruptcy filing.<sup>39</sup>

8 Evidence at hearing established that multiple investors would not have invested had they  
9 known about the undisclosed civil judgments and/or Canadian Bankruptcy Order.<sup>40</sup>

## 10 2. Fraud related to investor Brian Guenther

11 Murray solicited Brian Guenther to invest by email. To induce him to invest, the email  
12 solicitation from Murray included some examples of profits made on Fix and Flip Investment  
13 properties that were inflated by over 50%.<sup>41</sup>

## 14 3. Fraud in failure to purchase investment property with investor funds: investors 15 John Collins, Jason Baker, and Rebecca Warburton

16 Three Fix and Flip Investors, John Collins, Jason Baker, and Rebecca Warburton, were  
17 provided no proof that their investment funds were used to purchase any residential real estate, nor  
18 were they provided any updates about the status of their investment, both of which were required  
19 by their Agreements.<sup>42</sup> Murray admitted that no investment property was purchased with Mr.  
20 Baker’s funds despite the obligation to do so in the Agreement with Mr. Baker.<sup>43</sup> Murray also  
21 testified that he did not know what Ms. Warburton’s investment funds were used for, and did not  
22 know if he had purchased any property with Mr. Collin’s investment funds.<sup>44</sup>

23 <sup>37</sup> Exs. S-67, S-68; H.T. Vol. 2, p. 312, ln. 2-13, p. 317, ln. 2 – p. 318, ln. 9

24 <sup>38</sup> Exs. S-10, S-19, S-66; H.T. Vol. 1, p. 101, ln. 7 – 20, p. 102, ln. 4 – 13

25 <sup>39</sup> H.T. Vol. 1, p. 106, ln. 2 – 19

26 <sup>40</sup> H.T. Vol. 1, p. 72, ln. 20 – p. 73, ln. 6, p. 106, ln. 9 – 19, p. 125, ln. 21 – p. 126, ln. 2, p. 147, ln. 2-11

<sup>41</sup> Exs. S-3 at pp. 96-98, S-17, S-18, S-62 at ACC002112.01, S-72 at ACC002131, 2134; H.T. Vol. 2, p. 319, ln. 4 – p. 321, ln. 13

<sup>42</sup> Ex. S-79; H.T. Vol. 1, p. 30, ln. 5 – p. 31, ln. 1, p. 70, ln. 7 – 22; H.T. Vol. 2, p. 306, ln. 21-23

<sup>43</sup> Exs. S-3 at pp. 63 – 65, S-11

<sup>44</sup> Ex. S-3 at pp. 98-99

1           4. Additional fraud involving investor John Collins

2           Mr. Collins invested \$75,000 with Murray on March 29, 2012.<sup>45</sup> As part of the Agreement,  
3 Murray agreed to provide Mr. Collins with a deed of trust to secure the investment, but failed to  
4 provide a deed of trust, or designate any investment property to Mr. Collins.<sup>46</sup> As noted above,  
5 Murray admitted he did not know if any investment property was purchased with Mr. Collins'  
6 funds.<sup>47</sup>

7           Although Mr. Collins was never designated an investment property by Murray, records  
8 show that his investment funds were used to purchase a property located at 8607 N. 53<sup>rd</sup> Dr. in  
9 Glendale, Arizona ("53<sup>rd</sup> Dr. Property"), which was designated as the investment property of four  
10 other investors (see below).<sup>48</sup> Mr. Collins' investment funds were also used to purchase a property  
11 located at 1935 E. Aloe in Chandler, Arizona ("Aloe Property"), which was designated as the  
12 investment property of another investor, Mr. Ram.<sup>49</sup>

13           5. Fraud involving investor Nischal Ram

14           Nischal Ram is a Fix and Flip Investor that invested \$65,000 with Murray on October 31,  
15 2011.<sup>50</sup> Approximately six months after the investment, in April 2012, Murray designated to Mr.  
16 Ram the Aloe Property as his investment property.<sup>51</sup> Murray acquired title to the Aloe Property  
17 under his wholly owned limited liability company, True North, LLC, in March 2012.<sup>52</sup> The LLC  
18 sold the Aloe Property in November 2011.<sup>53</sup> Murray admitted to the Division that he made a profit  
19 of \$18,345 on this property.<sup>54</sup> However, Murray failed to update Mr. Ram on the property status,  
20 including failing to advise him when the property sold, and failed to provide him with an  
21

22 <sup>45</sup> Exs. S-6 at ACC001886-1896, S-76 at ACC000783-784

23 <sup>46</sup> Exs. S-3 at pp. 98-99, S-6 at ACC001886-1896, S-33; H.T. Vol. 1, p. 32, ln. 12 – p. 33, ln. 2; p. 36, ln. 12 – p. 37, ln.

24 <sup>47</sup> Exs. S-3 at pp. 98-99

25 <sup>48</sup> Exs. S-30, S-76 at ACC000783-784, S-79; H.T. Vol. 2, p. 267, ln. 12 – p. 270, ln. 23

26 <sup>49</sup> Exs. S-54, S-76 at ACC000783-784, S-77, S-79, S-80, S-81; H.T. Vol. 2, p. 270, ln. 24 – p. 276, ln. 10

<sup>50</sup> Ex. S-8

<sup>51</sup> Ex. S-21 at pp. 15-16, H.T. Vol. 1, p. 123, ln. 4 – 24

<sup>52</sup> Exs. S-2; S-21 at p. 8, S-54

<sup>53</sup> Ex. S-55

<sup>54</sup> Exs. S-3 at p. 90, S-17 at ACC002133, S-72; H.T. Vol. 2, p. 266, ln. 6-22

1 accounting on the fix and flip.<sup>55</sup> Despite the Agreement requiring a 50/50 split of profits with Mr.  
 2 Ram, Murray failed to pay Mr. Ram his percentage of profits when the Aloe Property sold, and has  
 3 only paid Mr. Ram \$400.<sup>56</sup>

4 6. Fraud related to investor Sergey Reger

5 Another Fix and Flip investor, Sergey Reger, invested \$50,000 with Murray in March  
 6 2011, and two months later, Murray designated an investment property at 1707 North Sunset Drive  
 7 in Tempe, Arizona ("Sunset Property") to Mr. Reger.<sup>57</sup> Murray purchased the Sunset Property in  
 8 May 2011.<sup>58</sup> After the sale, Murray told Mr. Reger that he made a profit of \$4,821.17 on the  
 9 Sunset Property<sup>59</sup>, admitted to the Division that he made a profit of \$7,668 on the rehab<sup>60</sup>, and  
 10 later told another prospective investor that he made \$18,000 in profit on it<sup>61</sup>. The Agreement  
 11 between Murray and Mr. Reger required a 50/50 split of profits, but Mr. Reger was only paid  
 12 \$2,000 by Murray on the Sunset Property.<sup>62</sup>

13 7. Fraud related to the 53<sup>rd</sup> Dr. Property: investors Sergey Reger, Bill Cornish, Jeff  
 14 Coleman, and Michael Martin

15 Mr. Reger allowed Murray to invest in a second fix and flip property with his investment  
 16 funds, and in March 2012, Murray designated the 53<sup>rd</sup> Dr. Property as Mr. Reger's second  
 17 investment property.<sup>63</sup> Murray purchased this property and took title under True North, LLC in  
 18 March 2012.<sup>64</sup>

19 The 53<sup>rd</sup> Dr. Property was also pledged to another Fix and Flip investor, William Cornish,  
 20 who invested \$32,500 in December 2011.<sup>65</sup> Murray sold the 53<sup>rd</sup> Dr. Property in February 2013.<sup>66</sup>  
 21 Murray provided documents to the Division indicating that the 53<sup>rd</sup> Dr. Property sold at a loss of

22 <sup>55</sup> H.T. Vol. 1, p. 124, ln. 7 – p. 125, ln. 5

<sup>56</sup> Ex. S-8; H.T. Vol. 1, p. 125, ln. 6-11, p. 137, ln. 12-22

<sup>57</sup> Exs. S-26 at ACC000295, S-27 at ACC000052-54, 149

<sup>58</sup> Ex. S-28

<sup>59</sup> Ex. S-27 at ACC000069

<sup>60</sup> Exs. S-3 at p. 90, S-4, S-17 at ACC002131, S-72 at ACC002131; H.T. Vol. 1, p. 178, ln. 20 – p. 179, ln. 13

<sup>61</sup> Ex. S-62 at ACC002112.01; H.T. Vol. 1, p. 141, ln. 25 – p. 142, ln. 23; H.T. Vol. 2, p. 318, ln. 19 – p. 319, ln. 14

<sup>62</sup> Exs. S-6 at ACC001897-1899, S-27 at ACC000052-54, 72

<sup>63</sup> Exs. S-21 at pp. 12-13, S-26, S-27 at ACC000074-92

<sup>64</sup> Ex. S-30

<sup>65</sup> Ex. S-38

<sup>66</sup> Ex. S-31

1 \$47,832.32.<sup>67</sup> However, Murray failed to provide a final accounting update to Mr. Reger or Mr.  
2 Cornish when the 53<sup>rd</sup> Dr. Property was sold, as required by their Agreements.<sup>68</sup>

3 Mr. Reger's Agreement required profits and losses to be split equally with Murray.<sup>69</sup> A  
4 50% split of the loss on the 53<sup>rd</sup> Dr. Property would be \$23,916.16 (half of \$47,832.32). Using  
5 Murray's accounting for the 53<sup>rd</sup> Dr. Property, Murray owed Mr. Reger \$26,083.84 after the sale  
6 (original investment of \$50,000 - \$23,916.16 representing 50% portion of the loss), but failed to  
7 pay him anything on this investment.<sup>70</sup> The Agreement between Murray and Mr. Cornish required  
8 a 75/25 split of profits, but did not have any requirement that Mr. Cornish share a percentage of  
9 losses.<sup>71</sup> Thus, Murray owed Mr. Cornish his full investment amount of \$32,500 after the one year  
10 term despite any losses. Murray failed to repay Mr. Cornish anything.<sup>72</sup>

11 Jeff Coleman, another Fix and Flip Investor, invested \$20,000 with Murray on December  
12 31, 2011.<sup>73</sup> Murray designated the 53<sup>rd</sup> Dr. Property to Mr. Coleman as his investment property as  
13 well.<sup>74</sup> The Agreement between Mr. Coleman and Murray required Murray to pay Mr. Coleman  
14 his original investment plus 15.38% of all profits after one year.<sup>75</sup> There was no requirement in  
15 the Agreement that Mr. Colman was responsible for any portion of losses, yet Murray has failed to  
16 pay Mr. Coleman anything.<sup>76</sup>

17 Michael Martin invested \$25,000 as a Fix and Flip Investor with Murray on January 30,  
18 2012.<sup>77</sup> Again, Murray designated the 53<sup>rd</sup> Dr. Property as Mr. Martin's investment property.<sup>78</sup>  
19 Murray failed to update Mr. Martin on the status of the project as required by their Agreement, or  
20 provide an accounting to Mr. Martin after the sale of the property.<sup>79</sup> Mr. Martin's Agreement with

21 <sup>67</sup> Ex. S-72 at ACC002135

22 <sup>68</sup> Exs. S-38, S-27 at ACC000052-54; H.T. Vol. 1, p. 182, ln. 4-8; H.T. Vol. 2, p. 284, ln. 5-9

23 <sup>69</sup> Ex. S-27 at ACC000052-54

24 <sup>70</sup> Ex. S-26; H.T. Vol. 1, p. 181, ln. 4 – p. 182, ln. 3

25 <sup>71</sup> Ex. S-38

26 <sup>72</sup> H.T. Vol. 2, p. 228, ln. 13-17

<sup>73</sup> Exs. S-56, S-57

<sup>74</sup> Ex. S-58; H.T. Vol. 2, p. 280, ln. 18 – p. 281, ln. 14

<sup>75</sup> Ex. S-6 at ACC001877-1879

<sup>76</sup> *Id.*, H.T. Vol. 2, p. 280, ln. 15-17

<sup>77</sup> Ex. S-60

<sup>78</sup> H.T. Vol. 2, p. 287, ln. 20-24

<sup>79</sup> Ex. S-60; H.T. Vol. 2, p. 288, ln. 4-13

1 Murray did not require Mr. Martin to share any losses, and instead required Murray to return all  
2 capital at the end of the one year term, plus any profits.<sup>80</sup> Murray has paid Mr. Martin nothing.<sup>81</sup>

3 In total, the four investors that were designated the 53<sup>rd</sup> Dr. Property invested \$142,500.<sup>82</sup>  
4 According to Murray's accounting for the 53<sup>rd</sup> Dr. Property, the loss was only \$47,832.32.<sup>83</sup>  
5 Given that Murray failed to pay any of these investors for this investment property, Murray gained  
6 nearly \$95,000 from investors despite the loss on the rehab.

7 8. Fraud related to investor Soda Cajee

8 Soda Cajee is a Fix and Flip Investor that invested \$50,000 with Murray in June 2011.<sup>84</sup>  
9 Prior to investing, Murray told Ms. Cajee that the investment would be unaffected by any  
10 bankruptcy proceedings that could be filed.<sup>85</sup> Several months after her investment, in October  
11 2011, Murray designated property located at 1007 W. Barcelona in Gilbert, Arizona ("Barcelona  
12 Property") to Ms. Cajee for her investment.<sup>86</sup> Murray purchased the Barcelona Property in  
13 October 2011 for \$122,000.<sup>87</sup> According to public records, Murray sold this property in August  
14 2013 for \$175,000, but failed to provide Ms. Cajee with any updates or an accounting regarding  
15 profits or losses on the investment.<sup>88</sup> Ms. Cajee has never been repaid her investment.<sup>89</sup> Further,  
16 unbeknownst to Ms. Cajee, Murray did not use the Barcelona Property as an investment property,  
17 but instead used it as his personal residence from November 2012 – August 2013.<sup>90</sup>

18 9. Fraud related to investor Randall Flowerdew

19 Fix and Flip Investor Randall Flowerdew invested \$65,000 with Murray in June 2011.<sup>91</sup> In  
20 November 2011, Murray designated an investment property located at 8710 E. Amelia Ave. in  
21

22 <sup>80</sup> Ex. S-60

<sup>81</sup> H.T. Vol. 2, p. 287, ln. 20-24

<sup>82</sup> Exs. S-27 at ACC000052-54, S-38, S-56, S-57, S-58, S-60

<sup>83</sup> Ex. S-72 at ACC002135

<sup>84</sup> Ex. S-41

<sup>85</sup> Ex. S-43; H.T. Vol. 2, p. 232, ln. 17 – p. 234, ln. 11

<sup>86</sup> Exs. S-21 at pp. 16-17, S-44; H.T. Vol. 2, p. 234, ln. 19 – p. 236, ln. 3

<sup>87</sup> Ex. S-48

<sup>88</sup> Ex. S-49; H.T. Vol. 2, p. 238, ln. 20-24

<sup>89</sup> H.T. Vol. 2, p. 231, ln. 17-20

<sup>90</sup> Ex. S-47; H.T. Vol. 2, p. 237, ln. 22 – p. 238, ln. 19

<sup>91</sup> Exs. S-36, S-38

1 Scottsdale, Arizona (“Amelia Property”) as Mr. Flowerdew’s investment property.<sup>92</sup> Murray  
 2 purchased this property in December 2011.<sup>93</sup> The Amelia Property was sold in September 2012,  
 3 according to public records.<sup>94</sup> Murray provided the Division with documents admitting that the  
 4 Amelia Property sold at a profit of \$18,345.41.<sup>95</sup> Despite the fact that the Agreement between  
 5 Murray and Mr. Flowerdew required a 50/50 split of profits, Murray never paid Mr. Flowerdew,  
 6 nor was he provided with any accounting by Murray regarding the profit/loss on the Amelia  
 7 Property.<sup>96</sup>

#### 8 **IV. Legal Argument**

##### 9 **A. The Investments Offered and Sold by Murray Are Securities.**

10 The Division established at hearing that, from March 2011 until April 2012, Murray  
 11 offered and sold securities to ten Fix and Flip Investors in or from Arizona in the form of  
 12 investment contracts. The Division also established at hearing that from February 2012 until  
 13 August 2012, Murray offered and sold securities in or from Arizona in the form of notes to three  
 14 investors. These investments offered and sold by Murray fall squarely under the definition of  
 15 securities under the Securities Act. *See* A.R.S. § 44-1801(26).

##### 16 1. Investment contracts

17 Murray’s offerings to ten investors constitute an investment contract. Investment  
 18 contracts are included in the definition of securities. A.R.S. § 44-1801(26) (“Security means . . .  
 19 investment contract . . .”). The core definition of an investment contract was set forth in *S.E.C.*  
 20 *v. W.J. Howey Co.*, 328 U.S. 293 (1946), and this definition is now universally recognized as the  
 21 starting point for assessing whether any particular offer or sale constitutes the offer or sale of an  
 22 investment contract. Under the *Howey* test, an investment contract exists if it involves the  
 23 following three elements: (1) an investment of money or other consideration; (2) in a common  
 24

25 <sup>92</sup> *Id.*

<sup>93</sup> Ex. S-39

<sup>94</sup> Ex. S-40

<sup>95</sup> Exs. S-3 at p. 90, S-17 at ACC002136, S-72 at ACC002136

<sup>96</sup> Ex. S-38; H.T. Vol. 2, p. 228, ln. 13-21

1 enterprise; (3) with the expectation of profits earned solely from the efforts of the promoter or a  
2 thirty party. *See Howey*, 328 U.S. at 298. Although the test was designed to interpret federal  
3 law, Arizona courts have adopted the *Howey* test and ordinarily apply it to determine whether an  
4 investment is a security. *See Rose v. Dobras*, 128 Ariz. 209, 211, 624 P.2d 887, 889 (App.  
5 1981).

6 Arizona courts agree that the “investment contract” definition of a security embodies a  
7 flexible principal, “that is capable of adaptation to meet the countless and variable schemes  
8 devised by those who seek to use the money of others on the promise of profits.” *Nutek Info Sys.,*  
9 *Inc. v. Arizona Corp. Comm’n*, 194 Ariz. 104, 108, 977 P.2d 826, 830 (App. 1998). This flexible  
10 approach recognizes the investor’s economic reality and maximizes the protection that the  
11 Arizona Securities Act provides to Arizona investors.<sup>97</sup> *See Rose*, 128 Ariz. at 212, 624 P.2d at  
12 890 (“The supreme court has consistently construed the definition of ‘security’ liberally.”); *Reves*  
13 *v. Ernst & Young*, 494 U.S. 56, 61 (1990). Accordingly, substance controls over form. *See*  
14 *Nutek*, 194 Ariz. at 108-09, 977 P.2d at 830-31.

15 The investments by the Fix and Flip Investors in this case satisfy all three elements of the  
16 test set forth in *Howey*. The first prong of *Howey* has been established – an investment of  
17 money. Murray sought and obtained an investment of money from investors. Murray does not  
18 dispute that the investors provided an investment of money, and evidence was presented that Fix  
19 and Flip investors invested \$457,500.<sup>98</sup>

20 The second prong of *Howey* is also satisfied. With respect to this element, “[t]wo tests  
21 have been developed to determine the existence of a common enterprise in order to satisfy the

22  
23 <sup>97</sup> The Preamble to the Securities Act states:

24 The intent and purpose of this Act is for the protection of the public, the preservation of fair and equitable  
25 business practices, the suppression of fraudulent or deceptive practices in the sale or purchase of  
26 securities, and the prosecution of persons engaged in fraudulent or deceptive practices in the sale or  
purchase of securities. This Act shall not be given a narrow or restricted interpretation or construction, but  
shall be liberally construed as a remedial measure in order not to defeat the purpose thereof.

1951 Ariz. Sess. Laws ch. 18, § 20.

<sup>98</sup> Exs. S-3 at pp. 40-42, S-5, S-6, S-8, S-9, S-11, S-21 at p. 70, S-26 at ACC000295, S-27, S-33, S-35, S-36, S-38, S-  
41, S-50, S-51, S-56, S-57, S-60, S-61, S-65, S-79; H.T. Vol. 1, p. 27, lns. 8-9, p. 103, ln. 1-8; p. 119, ln. 25 – p. 120,  
ln. 12, p. 137, ln. 12-22; p. 143, ln. 6-10, p. 144, ln. 21 – p. 145, ln. 3

1 second prong of the *Howey* test: (1) the horizontal commonality test and (2) the vertical  
2 commonality test.” *Daggett v. Jackie Fine Arts, Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142, 1148  
3 (App. 1986). Arizona courts have held that commonality will be satisfied if either horizontal or  
4 vertical commonality can be shown. *Daggett*, 152 Ariz. at 566, 733 P.2d at 1149. “Horizontal  
5 commonality requires a pooling of investor funds collectively managed by a promoter or third  
6 party.” *Daggett*, 152 Ariz. at 565, 733 P.2d at 1148. Here, there was horizontal commonality for  
7 the investments by Sergey Reger, Bill Cornish, Jeff Coleman, and Michael Martin because  
8 Murray advised them all that their funds were used to fund the same property: the 53<sup>rd</sup> Dr.  
9 Property.<sup>99</sup> The Agreements between Murray and these four Fix and Flip Investors clearly  
10 establish that Murray managed and controlled the investments and investment funds. Murray is  
11 described as the “general partner” while the investor is the “limited partner”, and all management  
12 roles – finding the property, financing the property, renovating the property, and selling the  
13 property, are the responsibility of Murray, not the investor.<sup>100</sup> Murray admitted that Fix and Flip  
14 Investors did not have an active role in any of the renovations.<sup>101</sup>

15       There was also vertical commonality with these investors as well as the rest of the Fix and  
16 Flip Investors. For the vertical form of commonality to be established, a positive correlation  
17 between the potential profits of the investor and the potential profits of the promoter need only be  
18 demonstrated. *See Daggett*, 152 Ariz. at 566, 733 P.2d at 1149; *Vairo v. Clayden*, 153 Ariz. 13,  
19 17, 734 P.2d 110, 114 (App. 1987); *Foy v. Thorp*, 186 Ariz. 151, 158, 920 P.2d 31, 38 (App.  
20 1996). Here, vertical commonality existed because, under the Agreements, potential profits to  
21 Murray and the Fix and Flip Investors were dependent on the success of the fix and flips. Fix  
22 and Flip Investors invested a set amount of money, and both Murray and the Fix and Flip  
23 Investor split profits if the fix and flip sold for a profit.<sup>102</sup>

24 <sup>99</sup> Exs. S-21 at pp. 12-13, S-26, S-27 at ACC000074-92; S-38, Ex. S-58; H.T. Vol. 2, p. 280, ln. 18 – p. 281, ln. 14, p.  
25 287, ln. 20-24

<sup>100</sup> Exs. S-6 at ACC001877-1879, S-27 at ACC000052-54, S-38, S-60

<sup>101</sup> Ex. S-21 at p. 18

26 <sup>102</sup> Exs. S-6 at ACC001877-1882, 1886-99, S-8, S-9, S-11, S-27 at ACC000052-54, S-33, S-35, S-38, S-41, S-51, S-60,  
S-65, S-79

1 The final prong of the *Howey* test has evolved since it was first handed down over 60  
2 years ago. The original definition of this prong required investors to have had an expectation of  
3 profits solely from the efforts of others. *Howey*, 328 U.S. at 301. The rigidity of this prong was  
4 significantly lessened in *SEC v. Glenn W. Turner Enterprises*, 474 F.2d 476, 482 (9th Cir. 1973).  
5 There, the Ninth Circuit concluded that the “adherence to such an interpretation could result in a  
6 mechanical, unduly restrictive view of what is and what is not an investment contract.” *Id.* at  
7 482. The *Turner* court, “adopt[ed] a more realistic test, whether the efforts made by those other  
8 than the investor are the undeniably significant ones, those essential managerial efforts which  
9 affect the failure or success of the enterprise.” *Id.*

10 Arizona courts have followed *Turner* in broadening this third prong. *See Nutek*, 194 Ariz.  
11 104, 977 P.2d 826; *Foy*, 186 Ariz. 151, 920 P.2d 31; *Daggett*, 152 Ariz. 559, 733 P.2d 1142. As  
12 such, in order to satisfy the third *Howey* prong in Arizona, one must only establish that the efforts  
13 made by those other than the investors were the undeniably significant ones, and were those  
14 essential managerial efforts which affected the failure or success of the enterprise. *Id.*

15 The trier of fact must look beyond the form of the documents to the substance of the  
16 transaction in deciding whether the securities laws apply to it. *Nutek*, 194 Ariz. at 109, 977 P.2d  
17 at 831 (following *Williamson v. Tucker*, 645 F.2d 404 (5th Cir. 1981)). Arizona has adopted a  
18 three factor analysis from the Fifth Circuit in *Williamson* in analyzing the third prong of *Howey*:

19 “A general partnership or joint venture interest can be designated a security if the  
20 investor can establish, for example, that (1) an agreement among the parties leaves  
21 so little power in the hands of the partner or venturer that the arrangement in fact  
22 distributes power as would a limited partnership; or (2) the partner or venturer is so  
23 inexperienced and unknowledgeable in business affairs that he is incapable of  
24 intelligently exercising his partnership or venture powers; or (3) the partner or  
25 venturer is so dependent on some unique entrepreneurial or managerial ability of the  
26 promoter or manager that he cannot replace the manager of the enterprise or  
otherwise exercise meaningful partnership or venture powers.”

*Nutek*, 194 Ariz. at 109, 977 P.2d at 831 (quoting *Williamson*, 645 F.2d at 424). The level of  
control retained by the investor over the investment, both legal and practical, is part of the third  
prong of the *Howey* test. *Nutek*, 194 Ariz. at 109, 977 P.2d at 831; *see also Vairo*, 153 Ariz. at

1 18; 734 P.2d at 115; *Foy*, 186 Ariz. at 158, 920 P.2d at 38; *Rose*, 128 Ariz. at 213, 624 P.2d at  
2 890. This requires looking not only at the documents structuring the investment, but oral and  
3 written representations made by the promoters at the time of investment. *Nutek*, 194 Ariz. at  
4 109, 977 P.2d at 831 (citing *Williamson*, 645 F.2d at 423).

5 The Fix and Flip Agreements left the Fix and Flip Investors no legal control over the  
6 investment. There is no provision in the Agreements that allow the Fix and Flip Investors any  
7 managerial or operational control with respect to the investment properties.<sup>103</sup> All pertinent  
8 managerial decisions were made by Murray. Murray decided which property to purchase,  
9 determined which investor would be designated each property for their investment, decided how  
10 to finance the purchase, how to renovate it, and the sales price.<sup>104</sup> Further, Murray admitted that  
11 the investors had a passive role.<sup>105</sup> While the actual Agreements signed by Murray and the Fix  
12 and Flip Investors were titled “Joint Venture Agreement” or “Partnership Agreement”, the title  
13 alone does not insulate the offerings from the Securities Act. These were not general or equal  
14 partnerships. They were limited partnerships with Murray retaining legal and actual control as  
15 the general partner. The Agreements specifically designate Murray as the “general partner”,  
16 while the investor is the “limited partner”.<sup>106</sup>

17 Second, even assuming the investors had the legal ability to control the investments,  
18 which they did not, there is no evidence that the Fix and Flip Investors had the requisite technical  
19 experience to be able to manage or operate the Fix and Flip Investments. Simply because an  
20 investor has generalized business experience or has previously invested in the technical field of  
21 the investment does not equate to the investor having the requisite experience to be able to  
22 *manage and operate the business of the investment*. See *Nutek*, 194 Ariz. at 111, 977 P.2d at 833.  
23 The analysis as to whether the investors possess the requisite expertise is on each individual

24 \_\_\_\_\_  
25 <sup>103</sup> Exs. S-6 at ACC001877-1882, 1886-99, S-8, S-9, S-11, S-27 at ACC000052-54, S-33, S-35, S-38, S-41, S-51, S-60,  
S-65

26 <sup>104</sup> *Id.*

<sup>105</sup> Ex. S-21 at p. 18

<sup>106</sup> Exs. S-6 at ACC001877-1882, 1886-99, S-8, S-9, S-11, S-27 at ACC000052-54, S-33, S-35, S-38, S-41, S-51, S-60,  
S-65

1 investor, not the group of investors as a whole. *Id.* There is absolutely no evidence from the  
2 hearing that any of the Fix and Flip Investors had the requisite experience to manage and operate  
3 a fix and flip business. In fact, the only testimony at hearing was that *one* investor had  
4 previously purchased rental properties for an investment.<sup>107</sup> Owning rental properties is not the  
5 same as managing and operating a fix and flip business. Further, the majority of the Fix and Flip  
6 Investors lived in Canada, making it impractical if not impossible to operate and manage a fix  
7 and flip investment property located in Arizona.<sup>108</sup> See *Nutek*, 194 Ariz. at 110-11, 977 P.2d at  
8 832-33 (considering the investors' geographic location in determining the ability to exercise  
9 control over the investment).

10 These facts establish that the third element of the *Howey* test is met. The investments at  
11 issue constitute securities in the form an investment contract.

## 12 2. Notes

13 Murray also offered and sold securities in the form of notes to three investors. A.R.S. § 44-  
14 1801(26) defines "any note" is a security. Arizona courts have developed two separate approaches  
15 in distinguishing between security and non-security notes under the Arizona Securities Act. The  
16 analysis used depends upon whether the issue is the violation of the registration provisions or the  
17 violation of antifraud provisions of the Securities Act. The Division has alleged both registration  
18 and antifraud violations for the Note Investments, so an analysis of each is provided.

### 19 a. Notes for Registration Violations

20 In *State v. Tober*, the Arizona Supreme Court held that the Securities Act provided a clear  
21 definition of the term "note" with the words "any note." 173 Ariz. at 211, 841 P.2d 206 (1992).  
22 Therefore, the Court had no reason to use any of the tests fashioned by the federal courts for  
23 determining whether a particular note was a security for purposes of registration. *Tober*, 173 Ariz.

24  
25  
26 <sup>107</sup> H.T. p. 132, ln. 20 – p. 133, ln. 19

<sup>108</sup> Exs. S-6 at ACC001877-1879, 1886-1899; S-26, S-8, S-38, S-41, S-51, S-60, S-79; H.T. Vol. 1, p. 24, ln. 12-17, p. 115, ln. 13 – p. 116, ln. 6, p. 163, ln. 20 – p. 164, ln. 9; H.T. Vol. 2, p. 297, ln. 24 – p. 298, ln. 2

1 at 213, 213 841 P.2d at 208. The Court held that all notes are securities that must be registered  
2 with the Commission unless an exemption applies.

3 In this case, the notes issued by Murray were titled “Promissory Note” or “Installment  
4 Note”.<sup>109</sup> Two of the Note Investments contained one year terms, and provided between 18% -  
5 20% annual interest.<sup>110</sup> The third Note Investment contained a three month term that provided  
6 18% annual interest, and required monthly interest payments and repayment at the end of the  
7 term.<sup>111</sup> Thus the Note Investments clearly meet the definition of “any note” and are subject to the  
8 registration requirements unless an exemption applies.

9 A.R.S. § 44-2033 places the burden on the the respondent to show that an exemption  
10 applies. Murray presented no evidence that any exemption that would apply to the Note  
11 Investments. Accordingly, the Note Investments are securities for purposes of the registration  
12 provisions of the Securities Act.

13 b. Notes for Antifraud Purposes

14 In *MacCollum v. Perkinson*, the appellate court concluded that a note as a security would  
15 be defined differently for purposes of the registration and antifraud provisions of the Securities  
16 Act, and adopted the family resemblance test set out by the U.S. Supreme Court in *Reves v. Ernst*  
17 *& Young* for the antifraud provisions. *MacCollum*, 185 Ariz. 179, 185, 913 P.2d 1097, 1103 (App.  
18 1996).

19 In *Reves*, the Court started with the *presumption* that notes are securities and established a  
20 two-part test with which the presumption may be rebutted. *Reves v. Ernst & Young*, 494 U.S. 56,  
21 63 (1990). The first part of the test requires a showing that the note “bears a strong resemblance”  
22 to an instrument listed in an enumerated category of exceptions. *Id.* *Reves* elaborated on this  
23 “family resemblance test” and set forth four factors to assist in ascertaining whether a note  
24 resembles one of the families of notes that are not securities to allow the presumption to be  
25

26 <sup>109</sup> Exs. S-3 at pp. 44-45, S-6, S-10, S-61, S-63, H.T. Vol. 2, p. 293, ln. 16 – p. 296, ln. 5

<sup>110</sup> Exs. S-6 at ACC001867.01; S-61, S-63

<sup>111</sup> Ex. S-10; H.T. Vol. 1, p. 101, ln. 10 – p. 102, ln. 2

1 rebutted. The factors are balanced to reach a determination. Failure to satisfy one of the factors is  
2 not dispositive; they are considered as a whole. *See McNabb v. S.E.C.*, 298 F.3d 1126, 1132-33  
3 (9th Cir. 2002) (holding that, although the third factor supported neither side's position, the notes  
4 in question nevertheless constituted securities).

5 The first factor established by the Court is to assess the motivations of the buyer and seller  
6 to enter into the transaction at issue. If the seller's purpose is to raise money for the general use of  
7 a business enterprise or to finance substantial investments and the buyer is interested primarily in  
8 the profit the note is expected to generate, the instrument is likely to be a security. *Id.* Here,  
9 Murray testified that he used Note Investors' funds to fund general expenses such as office  
10 expenses and "properties", and Note Investors were told that Murray was generally seeking capital  
11 for the fix and flips they were acting as a "hard money lender" for several properties.<sup>112</sup> Murray  
12 admitted that the Note Investors' investments were not tied to any particular property.<sup>113</sup> The Note  
13 Investors purchased the notes with the expectation of a substantial return on their investment, as  
14 reflected in the significant interest rates of 18-20%.<sup>114</sup> *See In re Greenbelt Property Management,*  
15 *LLC*, 2013 WL 3199809, \*2 (D. Ariz. Jun. 21, 2013); *S.E.C v. J.T. Wallenbrock & Associates*, 313  
16 F.3d 531, 538 (9th Cir. 2002) (finding that "a high, stable 20% interest rate likely attracted  
17 investors looking for significant profits). Thus, under the first factor of the *Reves* test, the Note  
18 Investments are securities.

19 The second factor is the plan of distribution. The court stated that the plan of distribution  
20 must be examined to determine if the "note" is an instrument in which there is "common trading  
21 for speculation or investment." *Id.* at 68-69; *see also MacCollum*, 185 Ariz. at 187, 913 P.2d at  
22 1105 ("Offering and selling to a broad segment of the public is all that is required to establish the  
23 requisite 'common trading' in an instrument.") (*quoting Reves*, 494 U.S. at 68 and *citing Landreth*  
24 *Timber Co. v. Landreth*, 471 U.S. 681, 694 (1985) (stock of closely held corporation not traded on  
25

26 <sup>112</sup> Ex. S-3 at pp. 45-46, S-62; H.T. Vol. 1, p. 109, ln. 23 – p. 110, ln. 13, p. 113, ln. 4-7

<sup>113</sup> Ex. S-3 at p. 45

<sup>114</sup> Exs. S-3 at pp. 44-45, S-6, S-10, S-61, S-63, H.T. Vol. 2, p. 293, ln. 16 – p. 296, ln. 5

1 any exchange held to be a security). Although the sale of notes to three investors in this case may  
2 not be a “broad segment of the public”, the Ninth Circuit has held that this does not end the  
3 inquiry. The court must also consider “the purchasing individual’s need for the protection of the  
4 securities laws.” *McNabb*, 298 F.3d at 1132. The fact that the notes are sold to individuals with  
5 no particular sophistication must be considered in evaluating the common trading factor. *See id.*  
6 (noting that the securities laws were intended to protect the sale of notes to six individuals, which  
7 was different than the situation in *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1539 (10th  
8 Cir.1993) where the sale was to specialized and sophisticated financial institutions and insurance  
9 companies).

10 None of the three individuals had invested with Murray prior to the Note Investments.<sup>115</sup>  
11 There is no evidence that any of them had invested in a business involving residential real estate  
12 prior to the Note Investment with Murray.<sup>116</sup> There is also no evidence that any of these  
13 individuals are financial institutions; in fact, a few are simply described as “friends”. The  
14 protection provided by the Securities Act would benefit the individual investors in this case. The  
15 second factor favors a finding of a security; minimally, it should not negate such a finding.

16 The third factor is to examine the reasonable expectations of the investing public. The  
17 *Reeves* Court stated that it will consider instruments to be securities on the basis of such public  
18 expectations, even where an economic analysis of the circumstances of the particular transaction  
19 might suggest that the instruments are not securities as used in that transaction. 494 U.S. at 68.  
20 The question is whether a reasonable member of the investing public would consider the note an  
21 investment, and is closely related to the first factor - motivation. *Wallenbrock*, 313 F.3d at 539  
22 (citing *MacNabb*, 298 F.3d at 1132). “The court must look to a reasonable investor, not the  
23 specific individuals in question.” *MacNabb*, 298 F.3d at 1132. The Note Investors had  
24 discussions with Murray about the Note Investments with the understanding it was an investment  
25

26 <sup>115</sup> H.T. Vol. 1, p. 100, ln. 25, p. 101, ln. 2

<sup>116</sup> E.g. H.T. Vol. 1, p. 99, ln. 2-7, p. 149, ln. 2-9.

1 opportunity, and Murray even described these note-holders as “investors.”<sup>117</sup> Again, the Note  
2 Investors purchased the notes with the expectation of a substantial return on their investment, as  
3 reflected in the significant interest rates of 18-20%.<sup>118</sup> This factor also weighs in favor of finding a  
4 security.

5 The fourth and final factor is whether some factor such as the existence of another  
6 regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of  
7 the securities laws unnecessary. *Reves*, 494 U.S. at 68; *see also MacNabb*, 298 F.3d at 1132.  
8 Because none exists, the record contains no evidence of risk-reducing factors that would obviate  
9 the need for the securities laws to apply. Consequently, under the fourth *Reves* factor, the Note  
10 Investments are securities.

11 Under the first part of the two part *Reves* test, the notes at issue should be categorized as  
12 securities. The second part of the *Reves* test is that if the note does not resemble one of the  
13 families of notes that are not securities, then, using the same four factors, the presumption may be  
14 rebutted by a showing that the note represents a category that should be added as a non-security.  
15 *Id.* The above analysis of the four factors negates rebuttal of the presumption on the second part of  
16 the *Reves* test as well. The Note Investments are securities for purposes of the antifraud provisions  
17 of the Securities Act.

18 **B. The Fix and Flip Investments and the Note Investments Were Offered and Sold in  
or From Arizona in Violation of A.R.S. § 44-1841 and § 44-1842**

19 The securities offered and sold to the thirteen investors were within or from Arizona and  
20 were in violation of A.R.S. § 44-1841 and § 44-1842 of the Securities Act.

21 First, although ten of the investors at issue were residents of Canada at the time of  
22 investing,<sup>119</sup> nine of the Canadian investors learned about the investment opportunity from Murray  
23

24  
25 <sup>117</sup> E.g. Ex. S-3, p. 45, 59, 61; H.T. Vol. 1, p. 99, ln. 13 – p. 100, ln. 24, p. 141, ln. 14-21.

<sup>118</sup> Exs. S-3 at pp. 44-45, S-6, S-10, S-61, S-63, H.T. Vol. 2, p. 293, ln. 16 – p. 296, ln. 5

26 <sup>119</sup> Exs. S-6 at ACC001877-1879, 1886-1899; S-26, S-8, S-38, S-41, S-51, S-60, S-63, S-79; H.T. Vol. 1, p. 24, ln. 12-  
17, p. 115, ln. 13 – p. 116, ln. 6, p. 140, ln. 17 – p. 141, ln. 4, p. 163, ln. 20 – p. 164, ln. 9; H.T. Vol. 2, p. 296, ln. 12-  
13, p. 297, ln. 24 – p. 298, ln. 2

1 by attending a seminar in Arizona prior to investing.<sup>120</sup> The final Canadian investor was contacted  
2 via email by Murray about the investment opportunity while Murray was in Arizona and sent his  
3 investment funds to Murray in Arizona.<sup>121</sup> The remaining three investors were Arizona residents  
4 at the time they invested.<sup>122</sup>

5 The securities at issue were not registered with the Commission, nor did Murray present  
6 any evidence that they were, and Murray was not registered with the Commission as a salesman or  
7 dealer, in violation of A.R.S. § 44-1841 and § 1842.<sup>123</sup> Pursuant to A.R.S. § 44-2034, the Division  
8 presented a certificate of non-registration for Murray and his securities for the relevant time  
9 period.<sup>124</sup>

### 10 **C. Murray Utilized Fraud in the Offer or Sale of Securities**

11 Fraud, including untrue statements of material fact and material omissions, in the offer or  
12 sale of securities violates the Securities Act. *See* A.R.S. § 44-1991(A)(2) (it is a fraud to “[m]ake  
13 any untrue statement of material fact, or omit to state any material fact necessary in order to make  
14 the statements made, in the light of the circumstances in which they were made, not misleading.”).  
15 The Division alleged and established at hearing that Murray violated the antifraud provision of the  
16 Securities Act, A.R.S. § 44-1991, with every investor, and in most instances, multiple times.

17 As it relates to fraud, the standard of materiality is whether a reasonable investor would  
18 have wanted to know the omitted facts. *See Rose*, 128 Ariz. at 214, 624 P.2d at 892. In the  
19 context of these provisions, the term “material” requires a showing of substantial likelihood that,  
20 under all the circumstances, the misstated or omitted fact would have assumed actual significance  
21 in the deliberations of a reasonable investor. *See Trimble v. American Sav. Life Ins. Co.*, 152 Ariz.  
22 548, 553, 733 P.2d 1131, 1136 (1986) (citing *Rose*, 128 Ariz. at 214, 624 P.2d at 892) (quoting  
23

24 <sup>120</sup> Exs. S-3 at pp. 59-60, S-26 at ACC000297, S-33, S-38, S-41, S-52, S-79; H.T. Vol. 1, p. 16, ln. 16-25, p. 117, ln. 13  
25 – p. 119, ln. 24; H.T. Vol. 2, p. 262, ln. 19 – p. 263, ln. 1, p. 278, ln. 3-8, p. 283, ln. 17-25, p. 284, ln. 16-22, p. 293, ln.  
7-15, 296, ln. 14-17, p. 298, ln. 2 – p. 299, ln. 3

<sup>121</sup> Ex. S-62; H.T. Vol 1, p. 143, ln. 6-16

<sup>122</sup> Exs. S-60, S-79; H.T. Vol. 1, p. 65, ln. 21 – p. 66, ln. 1, p. 68, ln. 9-11, p. 98, ln. 20 – p. 99, ln. 25

<sup>123</sup> Exs. S-1(a), S-3 at pp. 65-66, S-4 at Exhibit A, request 10, S-12, response to request 10

<sup>124</sup> *Id.*

1 *TSC Industries v. Northway, Inc.*, 426 U.S. 438 (1976)). There is an affirmative duty not to  
2 mislead potential investors in any way - a heavy burden on the offeror - and the investor is not  
3 required to investigate or act with due diligence. *Id.*

4 Additionally, a misrepresentation or omission of a material fact in the offer and sale of a  
5 security is actionable even though it may be unintended or the falsity or misleading character of  
6 the statement may be unknown. In other words, scienter or guilty knowledge is not an element of  
7 a violation of A.R.S. § 44-1991. *See, e.g., State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604,  
8 607 (1980). Stated differently, a seller of securities is strictly liable for any of the  
9 misrepresentations or omissions he makes. *See Rose*, 128 Ariz. at 214, 624 P.2d at 892. Unlike  
10 common law fraud, reliance upon a misrepresentation is not an element in fraud involving the offer  
11 or sale of securities. *Id.* The evidence elicited at hearing clearly establishes numerous violations  
12 of the antifraud provision of the Securities Act in connection with the offer and sale of the Fix and  
13 Flip and Note Investments.

14 1. Undisclosed judgments, bankruptcy orders and civil litigation

15 Murray had judgments against him that were not disclosed to investors that constitute a  
16 material omission. The June 2010 Judgment for over \$69,000 was entered in Canada following a  
17 lawsuit by one of Murray's Canadian investors. The June 2010 Judgment was recorded in Arizona  
18 in January 2012.<sup>125</sup> Murray failed to disclose the June 2010 Judgment to any of the investors at  
19 issue in this hearing, all of which invested after it was entered.<sup>126</sup>

20 The July 2011 Judgment for over \$115,000 was entered against Murray in Canada by  
21 another investor, which lead to that investor petitioning the Supreme Court of British Columbia for  
22 a bankruptcy order against Murray on January 4, 2012.<sup>127</sup> Murray did not disclose the July 13,  
23 2011 Judgment to Jeff Coleman, Michael Martin, Randall Flowerdew, Rebecca Warburton,  
24

25 <sup>125</sup> Ex. S-3 at pp. 83-84, S-14, S-82; H.T. Vol. 1, p. 182, ln. 17 – p. 186, ln. 5

26 <sup>126</sup> Ex. S-79; H.T. Vol. 1, p. 32, ln. 6-11, p. 72, ln. 20 – p. 73, ln. 6, p. 106, ln. 2-19, p. 125, ln. 21 – p. 126, ln. 2, p.  
147, ln. 2-11; p. 182, ln. 9-12; H.T. Vol. 2, p. 228, ln. 22 – p. 229, ln. 13, p. 238, ln. 25 – p. 239, ln. 3, p. 281, ln. 22 –  
25, p. 288, ln. 14-17, p. 296, ln. 18-22, p. 306, ln. 24 – p. 307, ln. 2

<sup>127</sup> Exs. S-3 at pp. 86-89, S-16, S-74, S-75; H.T. Vol. 1, p. 186, ln. 6 – p. 189, ln. 5, p. 190, ln. 3 – p. 191, ln. 7

1 Nischal Ram, Bill Cornish, Eric Popma, John Collins, Jason Baker, Brian Guenther, and Kymberly  
 2 Meyer, all of whom invested after the July 13, 2011 Judgment was entered.<sup>128</sup> The Supreme Court  
 3 of British Columbia entered the Canadian Bankruptcy Order against Murray on May 9, 2012.<sup>129</sup>  
 4 Mr. Guenther and Ms. Meyer, both Note Investors, invested after the Canadian Bankruptcy Order  
 5 was entered, but the Canadian Bankruptcy Order was not disclosed to either of them prior to  
 6 investing.<sup>130</sup>

7 These were material omissions that Murray should have disclosed to investors. *See e.g.*  
 8 *SEC v. Merchant Capital, LLC*, 483 F.3d 747, 770-71 (11th Cir. 2007) (holding the failure to  
 9 disclose bankruptcy a material omission under federal securities laws). A reasonable investor  
 10 would have wanted to know this information in making a decision as to whether to invest. In fact,  
 11 although the standard is objective - whether a *reasonable* investor would have wanted to know the  
 12 omitted fact, *Rose*, 128 Ariz. at 214, 624 P.2d at 892, the Division established at hearing that  
 13 multiple investors would not have invested had they known about the civil judgments and/or  
 14 Canadian Bankruptcy Order.<sup>131</sup>

15 Not only were these judgments and the Canadian Bankruptcy Order not disclosed to  
 16 investors, but at the time Mr. Collins and Mr. Baker invested in March and April 2012,  
 17 respectively, Murray affirmatively represented to them in their Agreements that Murray was not  
 18 subject to any bankruptcy proceedings.<sup>132</sup> The Canadian bankruptcy was pending at that time.<sup>133</sup>  
 19 Thus, Murray affirmatively misrepresented the lack of bankruptcy proceedings to Mr. Collins and  
 20 Mr. Baker in their Agreements, and never disclosed it in any other manner.<sup>134</sup> Murray also  
 21 affirmatively represented to Mr. Baker in April 2012 in his Agreement that there was no pending  
 22

23 <sup>128</sup> Exs. S-6 – S-11, S-79, S-33, S35 – S-36, S-38, S-51, S-56, S-60 – S-61, S-63, S-65 – S-66, S-79; H.T. Vol. 1, p. 32,  
 24 ln. 6-11, p. 72, ln. 20 – p. 73, ln. 6, p. 106, ln. 2-19, p. 125, ln. 21 – p. 126, ln. 2, p. 147, ln. 2-11; H.T. Vol. 2, p. 228,  
 ln. 22 – p. 229, ln. 13, p. 281, ln. 22 – 25, p. 288, ln. 14-17, p. 296, ln. 18-22, p. 306, ln. 24 – p. 307, ln. 2

25 <sup>129</sup> Exs. S-3 at p. 89, S-75

<sup>130</sup> H.T. Vol. 1, p. 106, ln. 2-19, p. 147, ln. 2-11

<sup>131</sup> H.T. Vol. 1, p. 72, ln. 20 – p. 73, ln. 6, p. 106, ln. 9 – 19, p. 125, ln. 21 – p. 126, ln. 2, p. 147, ln. 2-11

<sup>132</sup> Exs. S-6 at ACC001886-1896, S-11, S-33; H.T. Vol. 1, p. 31, ln. 14 – p. 32, ln. 5; p. 36, ln. 12 – p. 37, ln. 3

<sup>133</sup> Exs. S-3 at pp. 86-89, S-16, S-74, S-75; H.T. Vol. 1, p. 186, ln. 6 – p. 189, ln. 5, p. 190, ln. 3 – p. 191, ln. 7

<sup>134</sup> Exs. S-11, S-33, S-65; H.T. Vol. 1, p. 31, ln. 19 – p. 32, ln. 11, p. 71, ln. 20 – p. 72, ln. 25

1 or threatened litigation against Murray.<sup>135</sup> However, a former investor had a pending lawsuit  
 2 against Murray in Canada that was originally filed in November 2011, and which had been  
 3 amended on the same day Mr. Baker invested.<sup>136</sup> This was yet another affirmative material  
 4 misrepresentation.

5 Finally, on the day Murray filed his US Bankruptcy, he also entered into a Note Investment  
 6 with Ms. Meyer and accepted her investment funds.<sup>137</sup> Murray failed to disclose the US  
 7 Bankruptcy filing to Ms. Meyer.<sup>138</sup> Not only would a reasonable investor have wanted to know  
 8 this material information, but Ms. Meyer testified she would not have invested had Murray  
 9 disclosed it.<sup>139</sup>

10 These material omissions and material affirmative misrepresentations constitute at least 30  
 11 violations of A.R.S. § 44-1991.

## 12 2. Fraud related to investor Brian Guenther

13 Murray solicited Brian Guenther to invest by email. To induce him to invest, the email  
 14 solicitation from Murray included some examples of profits made on Fix and Flip investment  
 15 properties that were inflated by over 50%.<sup>140</sup> This was a material misstatement made by Murray  
 16 that was made in an effort to induce him to invest. This violated A.R.S. § 44-1991.

## 17 3. Fraud in failure to purchase investment property with investor funds: investors John Collins, Jason Baker, and Rebecca Warburton

18 The investment documents for three Fix and Flip investors, John Collins, Jason Baker, and  
 19 Rebecca Warburton, required Murray to use the investment funds to purchase, rehab, and resell  
 20 investment property.<sup>141</sup> They were also to be provided updates by Murray regarding the status of  
 21 the investment projects.<sup>142</sup> These investors were provided no proof that their investment funds  
 22

23 <sup>135</sup> Exs. S-11, S-65; H.T. Vol. 1, p. 71, ln. 20 – p. 72, ln. 25

24 <sup>136</sup> Exs. S-67, S-68; H.T. Vol. 2, p. 312, ln. 2-13, p. 317, ln. 2 – p. 318, ln. 9

25 <sup>137</sup> Exs. S-10, S-19, S-66; H.T. Vol. 1, p. 101, ln. 7 – 20, p. 102, ln. 4 – 13

26 <sup>138</sup> H.T. Vol. 1, p. 106, ln. 2 – 19

<sup>139</sup> *Id.*

<sup>140</sup> Exs. S-3 at pp. 96-98, S-17, S-18, S-62 at ACC002112.01, S-72 at ACC002131, 2134; H.T. Vol. 2, p. 319, ln. 4 – p. 321, ln. 13

<sup>141</sup> Exs. S-11, S-33, S-51, S-65

<sup>142</sup> *Id.*

1 were used to purchase any residential real estate, nor were they provided any updates about the  
 2 status of their investment.<sup>143</sup> Murray admitted that no investment property was purchased with Mr.  
 3 Baker's funds despite the obligation to do so in the Agreement with Mr. Baker.<sup>144</sup> Murray also  
 4 testified that he did not know what Ms. Warburton's investment funds were used for, and did not  
 5 know if he had purchased any property with Mr. Collin's investment funds.<sup>145</sup> These actions  
 6 constitute fraud in violation of A.R.S. § 44-1991.

#### 7 4. Additional fraud involving investor John Collins

8 Mr. Collins invested \$75,000 with Murray on March 29, 2012.<sup>146</sup> As part of the  
 9 Agreement, Murray agreed to provide Mr. Collins with a deed of trust to secure the investment,  
 10 but failed to provide a deed of trust, or designate an investment property to Mr. Collins.<sup>147</sup>

11 Further, although Mr. Collins was never designated an investment property by Murray, his  
 12 investment funds were used to purchase the 53<sup>rd</sup> Dr. Property, which was designated as the  
 13 investment property of four other investors.<sup>148</sup> Mr. Collins' investment funds were also used to  
 14 purchase the Aloe Property, which was designated as the investment property of another investor,  
 15 Mr. Ram.<sup>149</sup> These are all violations of A.R.S. § 44-1991.

#### 16 5. Fraud involving investor Nischal Ram

17 Nischal Ram is a Fix and Flip Investor that invested \$65,000 with Murray on October 31,  
 18 2011.<sup>150</sup> In April 2012, Murray designated to Mr. Ram the Aloe Property as his investment  
 19 property.<sup>151</sup> Murray acquired title to the Aloe Property under his wholly owned limited liability  
 20 company, True North, LLC, in March 2012.<sup>152</sup> The LLC sold the Aloe Property in November  
 21

22 <sup>143</sup> Ex. S-79; H.T. Vol. 1, p. 30, ln. 5 – p. 31, ln. 1, p. 70, ln. 7 – 22; H.T. Vol. 2, p. 306, ln. 21-23

23 <sup>144</sup> Exs. S-3 at pp. 63 – 65, S-11

24 <sup>145</sup> Ex. S-3 at pp. 98-99

25 <sup>146</sup> Exs. S-6 at ACC001886-1896, S-76 at ACC000783-784

26 <sup>147</sup> Exs. S-3 at pp. 98-99, S-6 at ACC001886-1896, S-33; H.T. Vol. 1, p. 32, ln. 12 – p. 33, ln. 2; p. 36, ln. 12 – p. 37,  
 ln. 3

<sup>148</sup> Exs. S-30, S-76 at ACC000783-784, S-79; H.T. Vol. 2, p. 267, ln. 12 – p. 270, ln. 23

<sup>149</sup> Exs. S-54, S-76 at ACC000783-784, S-77, S-79, S-80, S-81; H.T. Vol. 2, p. 270, ln. 24 – p. 276, ln. 10

<sup>150</sup> Ex. S-8

<sup>151</sup> Ex. S-21 at pp. 15-16, H.T. Vol. 1, p. 123, ln. 4 – 24

<sup>152</sup> Exs. S-2; S-21 at p. 8, S-54

1 2011.<sup>153</sup> Murray admitted to the Division that he made a profit of \$18,345 on this property.<sup>154</sup>  
 2 However, despite representations in the Agreement that required Murray to do so, Murray failed to  
 3 update Mr. Ram on the property status, including failing to advise him when the property sold, and  
 4 failing to provide him with an accounting on the fix and flip.<sup>155</sup> Despite the Agreement requiring a  
 5 50/50 split of profits with Mr. Ram, Murray failed to pay Mr. Ram his percentage of profits when  
 6 the Aloe Property sold, and has only paid Mr. Ram \$400.<sup>156</sup> These actions constitute fraud in  
 7 violation of A.R.S. § 44-1991.

8 6. Fraud related to investor Sergey Reger

9 Another Fix and Flip investor, Sergey Reger, invested \$50,000 with Murray in March  
 10 2011, and two months later, Murray designated the Sunset Property as Mr. Reger's investment  
 11 property.<sup>157</sup> Murray purchased the Sunset Property in May 2011.<sup>158</sup> After the sale, Murray told  
 12 Mr. Reger that he made a profit of \$4,821.17 on the Sunset Property<sup>159</sup>, admitted to the Division  
 13 that he made a profit of \$7,668 on the rehab<sup>160</sup>, and later told another prospective investor that he  
 14 made \$18,000 in profit on it<sup>161</sup>. The Agreement between Murray and Mr. Reger required a 50/50  
 15 split of profits, but Mr. Reger was only paid \$2,000 by Murray on the Sunset Property.<sup>162</sup> This  
 16 violated A.R.S. § 44-1991.

17 7. Fraud related to the 53<sup>rd</sup> Dr. Property: investors Sergey Reger, Bill Cornish,  
Jeff Coleman, and Michael Martin

18 Mr. Reger allowed Murray to invest in a second fix and flip property with his investment  
 19 funds, and in March 2012, Murray designated the 53<sup>rd</sup> Dr. Property as Mr. Reger's second  
 20 investment property.<sup>163</sup> Murray purchased this property and took title under True North, LLC in  
 21

22 <sup>153</sup> Ex. S-55

23 <sup>154</sup> Exs. S-3 at p. 90, S-17 at ACC002133, S-72; H.T. Vol. 2, p. 266, ln. 6-22

24 <sup>155</sup> Ex. S-8; H.T. Vol. 1, p. 124, ln. 7 – p. 125, ln. 5

25 <sup>156</sup> Ex. S-8; H.T. Vol. 1, p. 125, ln. 6-11, p. 137, ln. 12-22

26 <sup>157</sup> Exs. S-26 at ACC000295, S-27 at ACC000052-54, 149

<sup>158</sup> Ex. S-28

<sup>159</sup> Ex. S-27 at ACC000069

<sup>160</sup> Exs. S-3 at p. 90, S-4, S-17 at ACC002131, S-72 at ACC002131; H.T. Vol. 1, p. 178, ln. 20 – p. 179, ln. 13

<sup>161</sup> Ex. S-62 at ACC002112.01; H.T. Vol. 1, p. 141, ln. 25 – p. 142, ln. 23; H.T. Vol. 2, p. 318, ln. 19 – p. 319, ln. 14

<sup>162</sup> Exs. S-6 at ACC001897-1899, S-27 at ACC000052-54, 72

<sup>163</sup> Exs. S-21 at pp. 12-13, S-26, S-27 at ACC000074-92

1 March 2012.<sup>164</sup> The 53<sup>rd</sup> Dr. Property was also pledged to another Fix and Flip investor, William  
2 Cornish, who invested \$32,500 in December 2011.<sup>165</sup> Murray sold the 53<sup>rd</sup> Dr. Property in  
3 February 2013.<sup>166</sup> Murray provided documents to the Division indicating that the 53<sup>rd</sup> Dr. Property  
4 sold at a loss of \$47,832.32.<sup>167</sup> However, Murray failed to provide a final accounting update to  
5 Mr. Reger or Mr. Cornish when the 53<sup>rd</sup> Dr. Property was sold, as required by their Agreements.<sup>168</sup>  
6 Mr. Reger's Agreement required profits and losses to be split equally with Murray.<sup>169</sup> A 50% split  
7 of the loss on the 53<sup>rd</sup> Dr. Property would be \$23,916.16 (half of \$47,832.32). Using Murray's  
8 accounting for the 53<sup>rd</sup> Dr. Property, Murray owed Mr. Reger \$26,083.84 after the sale (original  
9 investment of \$50,000 - \$23,916.16 representing 50% portion of the loss), but failed to pay him  
10 anything on this investment.<sup>170</sup> The Agreement between Murray and Mr. Cornish required a 75/25  
11 split of profits, but did not have any requirement that Mr. Cornish share a percentage of losses.<sup>171</sup>  
12 Thus, Murray owed Mr. Cornish his full investment amount of \$32,500 after the one year term  
13 despite any losses. Murray failed to repay Mr. Cornish anything.<sup>172</sup> These actions constitute fraud  
14 in violation of A.R.S. § 44-1991.

15 Jeff Coleman, another Fix and Flip Investor, invested \$20,000 with Murray on December  
16 31, 2011.<sup>173</sup> Murray designated the 53<sup>rd</sup> Dr. Property to Mr. Coleman as his investment property  
17 as well.<sup>174</sup> The Agreement between Mr. Coleman and Murray required Murray to pay Mr.  
18 Coleman his original investment plus 15.38% of all profits after one year.<sup>175</sup> There was no  
19 requirement in the Agreement that Mr. Colman was responsible for any portion of losses, yet  
20 Murray has failed to pay Mr. Coleman anything.<sup>176</sup>

21 <sup>164</sup> Ex. S-30

22 <sup>165</sup> Ex. S-38

<sup>166</sup> Ex. S-31

<sup>167</sup> Ex. S-72 at ACC002135

23 <sup>168</sup> Exs. S-38, S-27 at ACC000052-54; H.T. Vol. 1, p. 182, ln. 4-8; H.T. Vol. 2, p. 284, ln. 5-9

<sup>169</sup> Ex. S-27 at ACC000052-54

24 <sup>170</sup> Ex. S-26; H.T. Vol. 1, p. 181, ln. 4 – p. 182, ln. 3

<sup>171</sup> Ex. S-38

25 <sup>172</sup> H.T. Vol. 2, p. 228, ln. 13-17

<sup>173</sup> Exs. S-56, S-57

26 <sup>174</sup> Ex. S-58; H.T. Vol. 2, p. 280, ln. 18 – p. 281, ln. 14

<sup>175</sup> Ex. S-6 at ACC001877-1879

<sup>176</sup> *Id.*, H.T. Vol. 2, p. 280, ln. 15-17

1 Michael Martin invested \$25,000 as a Fix and Flip Investor with Murray on January 30,  
 2 2012.<sup>177</sup> Again, Murray designated the 53<sup>rd</sup> Dr. Property as Mr. Martin's investment property.<sup>178</sup>  
 3 Murray failed to update Mr. Martin on the status of the project as required by their Agreement, or  
 4 provide an accounting to Mr. Martin after the sale of the property.<sup>179</sup> Mr. Martin's Agreement  
 5 with Murray did not require Mr. Martin to share any losses, and instead required Murray to return  
 6 all capital at the end of the one year term, plus any profits.<sup>180</sup> Murray has paid Mr. Martin  
 7 nothing.<sup>181</sup> The failure to pay Mr. Coleman and Mr. Martin as required under the Agreements  
 8 constitutes fraud in violation of A.R.S. § 44-1991.

9 In total, the four investors that were designated the 53<sup>rd</sup> Dr. Property invested \$142,500.<sup>182</sup>  
 10 According to Murray's accounting for the 53<sup>rd</sup> Dr. Property, the loss was only \$47,832.32.<sup>183</sup>  
 11 Given that Murray failed to pay any of these investors for this investment property, Murray gained  
 12 nearly \$95,000 from investors despite the loss on the rehab.

#### 13 8. Fraud related to investor Soda Cajee

14 Soda Cajee invested \$50,000 with Murray in June 2011.<sup>184</sup> Prior to investing, Murray told  
 15 Ms. Cajee that the investment would be unaffected by any bankruptcy proceedings that could be  
 16 filed.<sup>185</sup> This was a material misrepresentation of material fact because it is an incorrect statement  
 17 of the law. In the event of a bankruptcy filing by Murray after the investment, Murray's debt to  
 18 Ms. Cajee would be subject to the bankruptcy proceedings, and Ms. Cajee would have to file a  
 19 claim to get relief from Murray. *See* 11 U.S.C. § 101, *et seq.* Further, Ms. Cajee, as creditor,  
 20 would be subject to the automatic stay of the bankruptcy proceedings, could not file a civil lawsuit  
 21  
 22

23 <sup>177</sup> Ex. S-60

24 <sup>178</sup> H.T. Vol. 2, p. 287, ln. 20-24

25 <sup>179</sup> Ex. S-60; H.T. Vol. 2, p. 288, ln. 4-13

26 <sup>180</sup> Ex. S-60

<sup>181</sup> H.T. Vol. 2, p. 287, ln. 20-24

<sup>182</sup> Exs. S-27 at ACC000052-54, S-38, S-56, S-57, S-58, S-60

<sup>183</sup> Ex. S-72 at ACC002135

<sup>184</sup> Ex. S-41

<sup>185</sup> Ex. S-43; H.T. Vol. 2, p. 232, ln. 17 – p. 234, ln. 11

1 for breach of the Agreement after Murray filed bankruptcy, and would be subject to repayment, if  
2 any, only as ordered by the bankruptcy court. 11 U.S.C. §§ 362, 501, *et seq.*

3 Several months after her investment, in October 2011, Murray designated the Barcelona  
4 Property to Ms. Cajee for her investment.<sup>186</sup> Murray purchased the Barcelona Property in October  
5 2011 for \$122,000.<sup>187</sup> According to public records, Murray sold this property in August 2013 for  
6 \$175,000, but failed to provide Ms. Cajee with any updates or an accounting regarding profits or  
7 losses on the investment.<sup>188</sup> Ms. Cajee has never been repaid her investment.<sup>189</sup> Further,  
8 unbeknownst to Ms. Cajee, Murray did not use the Barcelona Property as an investment property  
9 as required by the Agreement, but instead used it as his personal residence from November 2012 –  
10 August 2012.<sup>190</sup> Both of these are violations of the antifraud provisions of the Securities Act.

11 9. Fraud related to investor Randall Flowerdew

12 Fix and Flip Investor Randall Flowerdew invested \$65,000 with Murray in June 2011.<sup>191</sup>  
13 In November 2011, Murray designated the Amelia Property as Mr. Flowerdew's investment  
14 property.<sup>192</sup> Murray purchased this property in December 2011.<sup>193</sup> The Amelia Property was sold  
15 in September 2013, according to public records.<sup>194</sup> Murray provided the Division with documents  
16 admitting that the Amelia Property sold at a profit of \$18,345.41.<sup>195</sup> Despite the fact that the  
17 Agreement between Murray and Mr. Flowerdew required a 50/50 split of profits, Murray never  
18 paid Mr. Flowerdew, nor was he provided with any accounting by Murray regarding the profit/loss  
19 on the Amelia Property.<sup>196</sup> This violates A.R.S. § 44-1991.

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22 <sup>186</sup> Exs. S-21 at pp. 16-17, S-44; H.T. Vol. 2, p. 234, ln. 19 – p. 236, ln. 3

<sup>187</sup> Ex. S-48

23 <sup>188</sup> Ex. S-49; H.T. Vol. 2, p. 238, ln. 20-24

<sup>189</sup> H.T. Vol. 2, p. 231, ln. 17-20

24 <sup>190</sup> Ex. S-47; H.T. Vol. 2, p. 237, ln. 22 – p. 238, ln. 19

<sup>191</sup> Exs. S-36, S-38

25 <sup>192</sup> *Id.*

<sup>193</sup> Ex. S-39

26 <sup>194</sup> Ex. S-40

<sup>195</sup> Exs. S-3 at p. 90, S-17 at ACC002136, S-72 at ACC002136

<sup>196</sup> Ex. S-38; H.T. Vol. 2, p. 228, ln. 13-21

1 **D. Numerous Offers and Sales of the Securities.**

2 The Division has established that Murray violated both the registration and the antifraud  
3 provisions of the Securities Act. The final consideration is the number of violations of the  
4 Securities Act by Murray, and the penalty that should be issued. In assessing the administrative  
5 penalty, "each violation" carries a penalty. *See* A.R.S. § 44-2036 (an assessment of an  
6 administrative penalty may be assessed "in an amount not to exceed five thousand dollars for each  
7 violation."). Each offer, sale, and violation of the antifraud provision of the Securities Act by  
8 Murray is a separate violation. *See* A.R.S. §§ 44-1841(A), 44-1842(A), 44-1991.

9 The evidence established that Murray sold unregistered securities as an unregistered dealer  
10 to thirteen investors who invested \$772,500 with Murray, and only \$35,183 has been repaid.<sup>197</sup>  
11 The Securities Act and Commission Rules also provide a remedy of restitution. A.R.S. § 44-  
12 2032(1); R14-4-308(C). Murray should be ordered to pay \$772,500 in restitution pursuant to  
13 A.R.S. § 44-2032(1), plus prejudgment interest from the date that each investor invested (as set  
14 forth in Exhibit S-79), minus the \$35,183 repaid to specific investors.<sup>198</sup>

15 The evidence also established that each offer and sale involved at least forty five instances  
16 of fraud, as shown above. Murray should also be ordered to pay an administrative penalty,  
17 minimally in the amount of \$175,000. Given that the Commission could issue an administrative  
18 penalty in excess of \$300,000 for the unregistered offer and sales violations and fraud violations  
19 totaling over 60 violations total, this is substantially less than the maximum penalty that the  
20 Commission is authorized to issue.

21 //

22 //

23 //

24 <sup>197</sup> Exs. S-3 at pp. 40-42, 44-45, S-5, S-6, S-8, S-9, S-10, S-11, S-21 at p. 70, S-26 at ACC000295, S-27, S-33, S-35, S-  
25 36, S-38, S-41, S-50, S-51, S-56, S-57, S-60, S-61, S-63, S-65, S-66, S-79; H.T. Vol. 1, p. 27, lns. 8-9, p. 103, ln. 1-8,  
26 p. 119, ln. 25 – p. 120, ln. 12, p. 137, ln. 12-22; p. 143, ln. 6-10, p. 144, ln. 21 – p. 145, ln. 3; H.T. Vol. 2, p. 293, ln. 16  
– p. 296, ln. 5

<sup>198</sup> The Commission is required to include add interest to the restitution amount at a rate calculated pursuant to A.R.S.  
§ 44-1201 (as determined on the date the judgment is entered), minus any repayments. *See* A.A.C. R14-4-308(C)(1).

1           **E. The Marital Community is Jointly and Severally Liable.**

2           The Division also named Respondent Spouse in this action pursuant to A.R.S. § 44-  
3 2031(C), solely for purposes of determining the liability of the marital community. During all  
4 relevant times, Murray was married to Respondent Spouse.<sup>199</sup>

5           Pursuant to A.R.S. § 25-211, all property acquired by either husband or wife during the  
6 marriage is the community property of the husband and wife except for property that is acquired  
7 by gift, devise, descent or is acquired after service of a petition for dissolution of marriage, legal  
8 separation or annulment if the petition results in a decree of dissolution of marriage, legal  
9 separation or annulment. During marriage, “the spouses have equal management, control and  
10 disposition rights over their community property and have equal power to bind the community.”  
11 A.R.S. § 25-214(B). In addition, “. . . either spouse may contract debts and otherwise act for the  
12 benefit of the community.” A.R.S. § 25-215(D). “[T]he presumption of law is, in the absence of  
13 the contrary showing, that all property acquired and all business done and transacted during  
14 coverture, by either spouse, is for the community.” *Johnson v. Johnson*, 131 Ariz. 38, 45, 638  
15 P.2d 705, 712 (1981).

16           Respondent Spouse did not appear for hearing. No evidence was presented to rebut the  
17 presumption that the debts related to the investments at issue are community property. As such,  
18 Murray and Respondent Spouse are jointly and severally liable for any restitution or administrative  
19 penalties that are awarded by the Commission.

20           **IV. CONCLUSION**

21           The evidence produced at hearing includes the following:

22           A.     Murray offered unregistered securities in the form of investment contracts and/or  
23 notes within or from Arizona to offerees at least thirteen times;

24           B.     Murray sold unregistered securities in the form of investment contracts and/or notes  
25 as an unregistered dealer or salesman in or from Arizona to thirteen investors totaling \$772,500;

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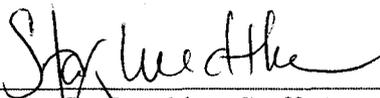
<sup>199</sup> Exs. S-3 at pp. 9, 31, S-21 at pp. 28-29; HT Vol. II, p. 241, ln. 18 – p. 245, ln. 19

1 C. Every offer and sale of the unregistered securities included fraud in connection with  
2 the offer and sale of securities by Murray;

3 Based upon the evidence admitted during the administrative hearing, the Division  
4 respectfully requests this tribunal to:

- 5 1. Order Murray and the marital community of Murray and Respondent Spouse,  
6 pursuant to A.R.S. §§ 44-2032(1) and 25-215, to jointly and severally pay restitution  
7 in the amount of \$772,500 in restitution pursuant to A.R.S. § 44-2032(1), plus  
8 prejudgment interest from the date that each investor invested (as set forth in  
9 Exhibit S-79), minus the \$35,183 repaid to specific investors. Pre-judgment interest  
10 to be calculated at the time of judgment under A.R.S. § 44-1201.
- 11 2. Order Murray and the marital community of Murray and Respondent Spouse to  
12 jointly and severally pay an administrative penalty of not more than five thousand  
13 dollars (\$5,000) for each violation of the Act, as the Court deems just and proper,  
14 pursuant to A.R.S. §§ 44-2036(A) and 25-215. The Division recommends Murray  
15 and the marital community of Murray and Respondent Spouse pay, jointly and  
16 severally, an administrative penalty in the amount of \$175,000.00.
- 17 3. Order Murray to cease and desist from further violations of the Act pursuant to  
18 A.R.S. § 44-2032.
- 19 4. Order any other relief this tribunal deems appropriate or just.

20  
21 RESPECTFULLY SUBMITTED this 14th day of March, 2014.

22  
23   
24 Stacy L. Luedtke, Staff Attorney for the Securities  
25 Division  
26

1 ORIGINAL and 9 copies of the foregoing  
2 filed this 14th day of March, 2014 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington St.  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered  
8 this 14th day of March, 2014, to:

9 The Honorable Marc E. Stern  
10 Administrative Law Judge  
11 Arizona Corporation Commission  
12 1200 W. Washington St.  
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed  
15 this 14th day of March, 2014, to:

16 Jonathon Murray & Wendy Murray  
17 10632 N Scottsdale Rd., #673  
18 Scottsdale, Arizona 85254  
19 *Respondents*

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