

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORP COMMISSION DOCKET CONTROL

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COMMISSIONERS

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

DOCKET NO. S-20906A-14-0063

In the matter of:

CONCORDIA FINANCING COMPANY, LTD, a/k/a "CONCORDIA FINANCE,"

ER FINANCIAL & ADVISORY SERVICES, L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA WANZEK, husband and wife,

Respondents.

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 that respondents Concordia Financing Company, Ltd., also known as "Concordia Finance," ER Financial & Advisory Services, L.L.C., Lance Michael Bersch and David John Wanzek (collectively, "Respondents") 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 also alleges that Lance Michael Bersch and David John Wanzek are persons controlling ER Financial & Advisory Services, L.L.C. within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as ER Financial & Advisory Services, L.L.C. for violations of the antifraud provisions of the Securities Act.

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I.

JURISDICTION

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

II.

RESPONDENTS

2. Concordia Financing Company, Ltd. (“Concordia”), also known as “Concordia Finance,” is a California corporation doing business within or from the State of Arizona at all relevant times.

3. ER Financial & Advisory Services, L.L.C. (“ERF&AS”) was an Arizona limited liability company organized on October 9, 2001. ERF&AS did business within or from the State of Arizona at all relevant times. ERF&AS filed with the Commission its *Articles of Termination* on October 31, 2012. The Commission issued to ERF&AS a *Certificate of Termination* on November 5, 2012.

4. Lance Michael Bersch (“Bersch”), also known as “Michael” or “Mike,” resides in Arizona.

5. David John Wanzek (“Wanzek”) resides in Arizona.

6. Linda Wanzek has been the spouse of Respondent David John Wanzek at all relevant times. Linda Wanzek may be referred to as “Respondent Spouse.” Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

7. Wanzek was acting for his own benefit and for the benefit or in furtherance of his and Respondent Spouse’s marital community at all relevant times.

III.

FACTS

8. Concordia was incorporated in California in 1994 with the purpose of purchasing and

1 servicing contracts for the sale of pre-owned, Class 8, "big rig" trucks ("Truck Financing Contracts").
2 Concordia sought capital from investors to purchase more Truck Financing Contracts. To raise
3 capital, Concordia issued Sale of Contracts and Servicing Agreements ("Servicing Agreements")
4 and promissory notes ("Promissory Notes").

5 9. The majority of investors entered into a Servicing Agreement. Pursuant to this
6 agreement, Concordia agreed to sell, assign and transfer to the investor a specific Truck Financing
7 Contract or Contracts purchased for the amount of money invested and promised to substitute a
8 performing contract for any defaulting contract assigned to the Servicing Agreement. The investor
9 agreed to fund the investment and hire Concordia to service any assigned Truck Financing Contract.

10 The Servicing Agreement explains how the two parties are to profit from the arrangement:

11 "As its fee for servicing each [Truck Financing] Contract, Concordia shall be entitled
12 to retain, during the entire term of the Contract, (a) all late payment fees, (b) all NSF
13 charges, and (c) all interest and other fees or charges in excess of that amount
required to pay Investor a... return... on the then existing principal balance due under
the Contracts."

14 Initially, Concordia offered a 12% per year return on investment, but, beginning in January 2004,
15 Concordia reduced the offered return to 10% per year.

16 10. The Servicing Agreement incorporates a Custodial Agreement. Pursuant to these
17 agreements, a custodian is to hold the Truck Financing Contracts assigned to a Servicing Agreement
18 and hold the titles to the vehicles subject to those Truck Financing Contracts. The custodian, in
19 turn, is to be paid by Concordia "a fee for his services in the amount of 0.25% per month of the
20 principal balance [of the underlying investment], payable monthly."

21 11. A few individuals invested in Concordia through a Promissory Note. Through the
22 Promissory Notes, Concordia promised monthly interest payments for the term of the note, which
23 was typically between 90 days and two years. Upon the expiration of the term, Concordia
24 promised to pay any unpaid interest and return any unpaid principal. The interest rate offered
25 through the notes varied between 10% per year and 1.25% per month.

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1 12. Neither the Servicing Agreement nor the Promissory Notes empower an investor to
2 direct Concordia's business operations.

3 13. Investment in Concordia was primarily offered and sold by Bersch or Wanzek,
4 individually or through ERF&AS.

5 14. At all relevant times, Bersch and Wanzek were certified public accountants licensed
6 in the State of Arizona and business partners in an accounting practice in Lake Havasu City,
7 Arizona.

8 15. About 1998, Bersch and Wanzek began offering and selling investment in
9 Concordia to others, including their own accounting clients. Eventually, Bersch and Wanzek
10 sought to separate their accounting business from the business with Concordia. In 2001, Bersch
11 and Wanzek organized ERF&AS as a member-managed limited liability company and established
12 themselves as ERF&AS's sole members.

13 16. Bersch and Wanzek, individually and eventually through ERF&AS, showed a
14 brochure entitled "CONCORDIA FINANCE / INVESTING IN TRANSPORTATION" to at least some
15 prospective investors. This brochure explains the business of Concordia, stating, "Concordia
16 Finance specializes in the financial needs of the commercial used truck market." The brochure also
17 explains the investment opportunity, stating:

18 Since 1994 Concordia Finance has been buying truck ("big rig") conditional
19 sales contracts from dealers and collecting the payments. Concordia
20 investors receive net 1.0% EACH MONTH in interest¹ for providing the
21 necessary capital. Concordia qualifies the buyer, purchases the contract
22 from the dealer and collects the payments. The investor then receives a
23 check or the money is credited to his account. This is done under a service
24 agreement with the investor. Concordia guarantees each contract. If any go
25 into repossession, Concordia will replace it with one of equal or greater
26 value.

(Emphasis in original). The word "Guaranteed" is in bold print elsewhere on the front of the
brochure.

¹ The return was, at some point, reduced from 1% per month to 10% per year.

1 17. Bersch or Wanzek, individually or through ERF&AS, also showed presentation
2 materials to at least some potential investors. The presentation materials state, among other things,
3 the following:

4 a. “Since 1994, Concordia Finance has purchased over \$10,000,000 in
5 conditional truck sales contracts from commercial truck dealers.... These dealers sell their
6 truck financing contracts to Concordia at a discount rate so as to receive immediate cash to
7 replenish their truck inventory.... Concordia raises capital to purchase these contracts from
8 investors in the form of Servicing Agreements (many of which are held by our present
9 clients);”

10 b. “These notes meet our client’s needs regarding... [s]afety of principal[,]
11 higher guaranteed interest [and] [l]iquidity;”

12 c. “Investment principal is secured by collateral represented by assigned
13 vehicle titles” and “Concordia guarantees to replace any non-performing contract with one
14 of equal or greater value;”

15 d. “Servicing Agreements pay a guaranteed 12% rate of return” and “pay a
16 guaranteed 12% annually;”²

17 e. “Servicing Agreements use assigned vehicle titles as collateral to guarantee
18 the safety of principal;”

19 f. Investors “can lock in guaranteed returns;”

20 g. “Servicing Agreements provide a safety of principal guarantee and 100%
21 liquidity in the event of emergency need;” and

22 h. “Higher guaranteed yield to offset inflation, safety of principal backed by
23 collateral and 100% liquidity has made Concordia Servicing Agreements the preferred fixed
24 income investment for many of our clients.”

25 18. The above-described presentation materials explain how an investor places money in
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² The 12% figure was at some point crossed out and 10% was handwritten into the presentation materials.

1 a Concordia Servicing Agreement, stating:

2 a. "Inform us of what amount you would like to invest...;"

3 b. "We complete a Concordia Sales and Servicing Agreement specifying the
4 investment amount and whether interest is to be paid monthly or left to accrue;"

5 c. "We send the check and agreement to them. Concordia then begins sending
6 you monthly interest checks along with a monthly report;" and

7 d. The "[c]ustodian holds contracts and assigned vehicle titles as investor
8 collateral."

9 19. Further, Bersch or Wanzek, individually or through ERF&AS, used a flow chart to
10 market investment in Concordia to at least some potential investors. This flow chart indicates that a
11 Concordia investment is a "product approved by" a specified third-party insurance company.

12 20. In practice, Concordia did not use any particular investor's capital to purchase the
13 Truck Financing Contract assigned to the investor's Servicing Agreement. Instead, Truck
14 Financing Contracts were purchased using monies pooled from the principal supplied by multiple
15 investors, as well as monies from other sources.

16 21. Not all Servicing Agreements had assigned to them specific performing Truck
17 Financing Contracts. At times, Concordia did not own sufficient performing Truck Financing
18 Contracts to replace a non-performing contract assigned to an investment with one of equal or
19 greater value.

20 22. Moreover, the vehicle titles subject to the Truck Financing Contracts were not put in
21 the name of the investors nor were investors listed as lien holders on the vehicle titles.

22 23. Finally, the interest Concordia paid on a given investment was not dependent upon
23 the performance of specific Truck Financing Contracts assigned to the particular investment.
24 Instead, Concordia used the pooled proceeds derived from all the Truck Financing Contracts and
25 other sources of income to pay interest payments to its investors.

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1 24. Contrary to the presentation materials, Concordia investments were never liquid
2 because investor principal, whether invested through a Servicing Agreement or a Promissory Note,
3 was used to purchase one or more Truck Financing Contracts and pay for company overhead and
4 Concordia lacked the readily-available resources refund the investors' principal.

5 25. Despite what was stated in the flow chart, the third-party insurer identified in the
6 flow chart never insured, underwrote, guaranteed or in any other way "approved" investment in
7 Concordia.

8 26. Concordia raised a total of about \$35,206,803 in investment principal from
9 approximately 446 distinct investments made by about 192 investors, approximately 116 of which
10 are Arizona residents. As of about July, 2013, Concordia had paid out to investors in the form of
11 principal repayments and profits approximately \$32,929,066.

12 27. Concordia began experiencing financial problems in about 2008. By 2009,
13 Concordia could no longer continue making interest payments without jeopardizing its ability to
14 remain in business. To address these problems, about February 1, 2009, Concordia sought investor
15 approval to amend the Servicing Agreements and Promissory Notes to discontinue the monthly
16 "interest payments" as promised and to begin making only monthly returns on principal.

17 28. The first amendment, however, did not resolve Concordia's financial problems.
18 Concordia found itself insolvent. So, about December 1, 2011, Concordia sought investor approval
19 to amend the Servicing Agreements and Promissory Notes for a second time. The purpose of the
20 second amendment was to further reduce Concordia's costs by cancelling as "bad debt" 55% of the
21 principal owed investors.

22 29. The connection between Concordia, on one hand, and Bersch, Wanzek and
23 ERF&AS, on the other, is as follows:

- 24 a. Bersch and Wanzek served on Concordia's board beginning in 2000.
- 25 b. Most of Concordia's investors were introduced to Concordia either directly
26 or indirectly through Bersch or Wanzek, individually or through ERF&AS.

1 c. The typical investor obtained the investment materials from Bersch, Wanzek
2 or ERF&AS, signed and returned the investment materials to Bersch, Wanzek or ERF&AS,
3 and Bersch, Wanzek or ERF&AS sent the signed investment materials, together with the
4 investor's money, to Concordia.

5 d. In most Servicing Agreements, the custodian is identified as ERF&AS. Only
6 in a very few instances was ERF&AS not the custodian under a Servicing Agreement.
7 Bersch or Wanzek, either directly or through ERF&AS, were paid custodian fees of at least
8 \$2,904,929.

9 e. And when Concordia struggled financially, Bersch and Wanzek assisted
10 Concordia in its efforts to get investors to accept the first and second amendments to the
11 Servicing Agreements and Promissory Notes.

12 30. For their part, Concordia paid Bersch and Wanzek, directly or through ERF&AS,
13 compensation of at least \$552,400.25. This compensation was calculated as a percentage of the
14 principal invested as a result of the sales efforts of Bersch or Wanzek, directly or through
15 ERF&AS.

16 31. Concordia's Sale of Contracts and Servicing Agreements are not registered with the
17 Arizona Corporation Commission.

18 32. Likewise, Concordia's Promissory Notes are not registered with the Arizona
19 Corporation Commission.

20 33. No Respondent was registered with the Arizona Corporation Commission as a
21 broker or salesman at any relevant time.

22 **IV.**

23 **VIOLATION OF A.R.S. § 44-1841**

24 **(Offer or Sale of Unregistered Securities)**

25 34. From about 1998 to 2009, Bersch, Wanzek, ERF&AS and/or Concordia offered or sold
26 securities in the form of investment contracts and promissory notes within or from Arizona.

1 **the requesting respondent must also answer this Notice.** A request for hearing must be in writing
2 and received by the Commission within 10 business days after service of this Notice of Opportunity
3 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
4 Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007. Filing instructions
5 may be obtained from Docket Control by calling 602-542-3477 or the Commission's Internet website
6 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

7 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
8 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
9 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
10 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
11 Opportunity for Hearing.

12 Persons with a disability may request a reasonable accommodation such as a sign language
13 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
14 Bernal, ADA Coordinator, by calling 602-542-3931 or emailing sabernal@azcc.gov. Requests
15 should be made as early as possible to allow time to arrange the accommodation. Additional
16 information about the administrative action procedure may be found at [http://www.azcc.gov/
17 divisions/securities/enforcement/AdministrativeProcedure.asp](http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp).

18 IX.

19 ANSWER REQUIREMENT

20 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
21 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
22 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
23 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
24 obtained from Docket Control by calling 602-542-3477 or the Commission's Internet web site at
25 <http://www.azcc.gov/divisions/hearings/docket.asp>.

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