

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

Arizona Corporation Commission

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ORIGINAL

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In the matter of:

DOCKET NO. S-20926A-15-0116

Deer Park Development Corporation,

**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**

Marty O'Malley and Julie Unruh O'Malley,
husband and wife,

Robert D. Bjerken,

Respondents.

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 Deer Park Development Corporation, Marty O'Malley and Robert Bjerken 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 further alleges that Respondent Marty O'Malley is a person controlling Deer Park Development Corporation within the meaning of A.R.S. § 44-1999, so that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as Deer Park Development Corporation for violations of the Securities Act.

I.

JURISDICTION

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

II.

RESPONDENTS

1
2
3 2. Deer Park Development Corporation (“DPDC”) is a Nevada corporation organized
4 under the laws of the state of Nevada in November 2005. DPDC has not been registered by the
5 Commission as a securities salesman or dealer.

6 3. Robert D. Bjerken (“Bjerken”), has been at all relevant times an unmarried man and
7 resident of the state of Arizona. Bjerken has not been registered by the Commission as a securities
8 salesman or dealer.

9 4. During the relevant timeframe, i.e. throughout the years 2009 – 2013, Bjerken was
10 the CFO of DPDC. Bjerken was also DPDC’s accountant.

11 5. Marty O’Malley (“O’Malley”), has been at all relevant times a married man and
12 resident of the state of Nevada. O’Malley has not been registered by the Commission as a securities
13 salesman or dealer.

14 6. At all relevant times, O’Malley was President and a Director of DPDC.

15 7. O’Malley and Respondent Spouse (defined below) also owned at least 30,000,000
16 shares of DPDC stock.

17 8. DPDC discusses O’Malley’s stock ownership and the authority related to such stock
18 in a “Confidential Private Placement Memorandum” (the “PPM”) which O’Malley caused to be
19 prepared and distributed to several DPDC investors.

20 9. The PPM states that, prior to the DPDC stock offering that is the subject of this case,
21 O’Malley owned 31,000,000 of the then-outstanding 37,500,000 DPDC shares. The stock offering
22 would result in 50,000,000 total outstanding shares. As the PPM makes clear, before and after the
23 stock offering, DPDC’s key officers, including O’Malley, would have control over the election of
24 directors and officers and over the company’s major decisions.

1 with Bjerken; Bjerken, as CFO of DPDC, signed Subscriptions given to at least 24 investors
2 including seven Subscriptions that he co-signed with O'Malley.

3 18. Each Subscription included the number of shares being purchased, the price of the
4 shares, and the signature of the subscriber.

5 19. At least 31 of the DPDC investors had the following representation in a Subscription
6 that they received from DPDC: "The subscriber has read, understands and accepts of the Private
7 Placement Memorandum of Deer Park Development Corporation."

8 20. The DPDC stock offering was not registered as a security with the Commission.

9 21. The 40 investors paid a total purchase price of approximately \$846,130 for their
10 DPDC stock.

11 22. Bjerken offered and sold DPDC stock to 39 of the 40 investors.

12 23. Bjerken acted as an accountant for and had longstanding relationships with most of
13 the persons to whom he sold DPDC stock. Several investors relied on Bjerken's favorable opinion
14 of the DPDC investment when deciding to invest.

15 24. The 39 investors to whom Bjerken offered DPDC stock paid a total of
16 approximately \$841,130 for their DPDC stock.

17 25. Multiple DPDC investors deposited their funds into a bank account in Arizona for
18 which Bjerken was a signatory. After investor funds were deposited into this account, Bjerken
19 would forward the funds to an account controlled by O'Malley.

20 26. O'Malley offered and sold stock to 17 of the 40 investors; these 17 investors
21 received Subscriptions signed by O'Malley. These 17 investors consist of one investor who dealt
22 exclusively with O'Malley and 16 investors to whom O'Malley and Bjerken jointly offered and
23 sold stock.

24 27. The 17 investors to whom O'Malley offered and sold DPDC stock paid a total of
25 \$303,800 for their DPDC stock; this includes \$5,000 from the investor to whom O'Malley solely
26 sold DPDC stock.

1 28. At all relevant times, O'Malley has been a signatory of DPDC's bank accounts, and
2 other bank accounts in which investor funds were deposited.

3 Failure to disclose previous Commission orders and other actions

4 29. Respondents failed to disclose to investors previous actions involving Securities Act
5 violations.

6 30. In 1991, 1996, and 2003, the Commission entered orders against Bjerken for
7 violations of the Securities Act (the "Commission Action(s)").

8 31. On June 6, 1991, the Commission found that Bjerken sold unregistered securities
9 without being licensed to sell securities, and that Bjerken violated A.R.S. § 44-1991. Among other
10 things, the factual findings show that Bjerken overstated the potential return on the investment and
11 failed to disclose the risks. The Commission ordered Bjerken to pay jointly and severally restitution
12 of \$67,500 and a \$7,000 penalty.

13 32. On December 18, 1996, the Commission found that Bjerken sold unregistered stock
14 in a company called "Go Unified, Inc." Bjerken was not licensed to sell securities. The
15 Commission also held that Bjerken violated A.R.S. § 44-1991 for multiple omissions and
16 misrepresentations. Among other things, Bjerken failed to disclose the 1991 Commission order; he
17 claimed that the company issuing stock had \$8,000,000 in assets when financial statements showed
18 that it had approximately \$200,000; he claimed that the company had an 8.5 to 1 "price-earnings"
19 ration when in fact the company had no earnings or established market price (the company was a
20 barely-functioning startup); and Bjerken represented that he was selling a "desperate shareholder's"
21 stock, when in fact he sold his own and the company's stock. This order required Bjerken to pay
22 \$119,000 in restitution, \$42,000 in penalties, and an additional \$5,000 penalty for violating the
23 Commission's 1991 order.

24 33. In the 2003 order, the Commission found that Bjerken, while not licensed with the
25 Commission, fraudulently offered and sold securities in the form of promissory notes. The
26 Commission also found that Bjerken violated the antifraud provisions of the Securities Act by

1 failing to disclose the 1991 and 1996 Commission orders to investors. This order required Bjerken
2 to pay \$8,234,144 in restitution and a \$10,000 penalty.

3 34. O'Malley was named as a respondent in the Commission's 1996 action involving
4 the Go Unified stock offering.

5 35. Additionally, one investor sued O'Malley for his role in the Go Unified stock
6 offering. Bjerken was also named as a defendant in the complaint. The investor obtained an
7 arbitration award against O'Malley and Go United for \$14,400.

8 36. A second lawsuit against O'Malley involved O'Malley and Go United selling a
9 \$50,000 promissory note. This lawsuit resulting in a judgment against O'Malley of \$2,130 and
10 \$62,609.27 (\$50,000 of this was principal).

11 37. Respondents failed to disclose to investors the 1991, 1996 and 2003 orders and the
12 civil litigation, arbitration award and judgment against O'Malley. These orders and actions are also
13 not disclosed in the PPM.

14 Failure to disclose O'Malley's 2002 bankruptcy

15 38. In its PPM, DPDC touted O'Malley's significant business and financial experience
16 and expertise. This included stating that O'Malley graduated with a degree in business, oversaw the
17 expansion of a real-estate company into eight different states, built his own real-estate investment
18 company, and acquired a communications company in 1996. The PPM further describes O'Malley:
19 "Having spent his entire business career in real estate in one form or another, he understands the
20 ups and downs of the market and how to make them profitable depending on the cycle."

21 39. DPDC failed, however, to disclose facts that would make these representations not
22 misleading. In 2002, O'Malley filed for Chapter 11 Bankruptcy in Arizona. On 2/10/03, O'Malley
23 converted his bankruptcy to a Chapter 7. On 2/3/2004, the bankruptcy was discharged.

24 40. The PPM was given to at least two investors prior to their purchase of DPDC stock;
25 these two investors provided copies of their PPMs to the Division. Additionally, at least 33
26

1 investors represented in their Subscriptions that they had read and accepted the PPM. The PPM did
2 not disclose O'Malley's 2002 bankruptcy.

3 Failure to disclose 2011 DPDC audit results

4 41. DPDC had an independent audit conducted that showed a net loss for 2010 with an
5 accumulated deficit of \$1,235,322.

6 42. The date of the independent audit for DPDC was July 15, 2011. The results of the
7 independent audit, specifically the net loss and accumulated deficit, were not disclosed to at least
8 three of the 20 investors who invested after that date.

9 IV.

10 VIOLATION OF A.R.S. § 44-1841

11 (Offer or Sale of Unregistered Securities)

12 43. From on or about January 2009 until approximately November 2013, Respondents
13 offered or sold securities in the form of stock issued by DPDC within or from Arizona to at least 40
14 investors. DPDC, as the issuer, offered and sold stock to all 40 investors. Of these 40, Bjerken offered
15 or sold stock to 39 of the investors; O'Malley and Bjerken jointly sold stock to 16 of the investors; and
16 one investor dealt exclusively with O'Malley.

17 44. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
18 Securities Act.

19 45. This conduct violates A.R.S. § 44-1841.

20 V.

21 VIOLATION OF A.R.S. § 44-1842

22 (Transactions by Unregistered Dealers or Salesmen)

23 46. Respondents offered or sold securities within or from Arizona as described above
24 while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

25 47. This conduct violates A.R.S. § 44-1842.

26

1 VI.

2 VIOLATION OF A.R.S. § 44-1991

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

4 48. In connection with the offer or sale of securities within or from Arizona, Respondents
5 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
6 of material fact or omitted to state material facts that were necessary in order to make the statements
7 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
8 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
9 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

10 a) Failing to disclose to investors the Commission actions resulting in orders
11 against Bjerken and the civil litigation and judgment against O'Malley described above;

12 b) Failing to disclose O'Malley's 2002 bankruptcy to the persons who received a
13 PPM; and

14 c) Failing to disclose the net loss and accumulated deficit reported in DPDC
15 independent audit to those investors who invested after the date of the audit.

16 49. This conduct violates A.R.S. § 44-1991.

17 VII.

18 REQUESTED RELIEF

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

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

22 2. Order Respondents to take affirmative action to correct the conditions resulting from
23 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
24 A.R.S. § 44-2032, with restitution against each Respondent as follows:

25 a) DPDC: \$846,130;

26 b) Bjerken: \$841,130, jointly and severally with DPDC; and

1 c) O'Malley: \$303,800, jointly and severally with DPDC, with \$298,800 of O'Malley's
2 restitution also paid jointly and severally with Bjerken

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

5 4. Order that Respondent O'Malley, as a controlling person of Respondent DPDC, is
6 jointly and severally liable with DPDC for DPDC's violations of the anti-fraud provisions pursuant to
7 A.R.S. § 44-1999(B);

8 5. Order that the marital community of Respondent O'Malley and Respondent Spouse be
9 subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative
10 action pursuant to A.R.S. § 25-215; and

11 6. Order any other relief that the Commission deems appropriate.

12 **VIII.**

13 **HEARING OPPORTUNITY**

14 Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-
15 1972 and A.A.C. R14-4-306. **If a Respondent or Respondent Spouse requests a hearing, the**
16 **requesting respondent must also answer this Notice.** A request for hearing must be in writing and
17 received by the Commission within 10 business days after service of this Notice of Opportunity for
18 Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
19 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be
20 obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at
21 <http://www.azcc.gov/divisions/hearings/docket.asp>.

22 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
23 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
24 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
25 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
26 Opportunity for Hearing.

