

11/17-18/15



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COMMISSIONERS
SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

JODI JERICH
EXECUTIVE DIRECTOR



SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 388-1335
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Susan Bitter Smith, Chairman
Bob Stump
Bob Burns
Doug Little
Tom Forese

DOCKETED

NOV 03 2015

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY [Signature]

DATE: 10/26/2015

RE: Deer Park Development Corporation, *et al.*, Docket No. S-20926A-15-0116

CC: Jodi Jerich, Executive Director

RECEIVED
2015 NOV - 3 P 12: 52
AZ CORP COMMISSION
DOCKET CONTROL

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties (“Order”) against Deer Park Development Corporation (“DPDC”).

The Order against DPDC is a default order. DPDC failed to timely file an answer to the Securities Division’s Notice of Opportunity. (As to the other respondents in this matter, the Securities Division is filing simultaneously with this Order proposed consent orders with the O’Malleyes and Bjerken.)

The Order finds that from approximately January 2009 to September 2013, DPDC violated A.R.S. §§ 44-1841 and 44-1842 by offering and selling unregistered stock to 40 persons. When it began selling stock, DPDC was a start-up company looking to get in the business of buying residential properties, rehabbing them, and then selling them for a profit. DPDC’s offering documents claimed that its officers had the financial wherewithal to earn profits in all market conditions. DPDC failed to disclose that Bjerken, DPDC’s CFO and principal salesman had three prior Commission orders against him. DPDC also failed to disclose that a DPDC director/officer had filed for bankruptcy in 2002. Finally, DPDC failed to disclose to a number of investors that a DPDC audit showed the company had incurred significant losses. These failures to disclose constitute violations of A.R.S. § 44-1991.

The Order requires DPDC to permanently cease and desist from violating the Securities Act, to pay a \$50,000 administrative penalty, and to pay restitution of \$842,630 to the investors.

The Securities Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Ryan J. Millecam

1 12. In exchange for their investments, the DPDC investors received stock certificates
2 signed by "Marty O'Malley" as President of DPDC.

3 13. At least 33 of the 40 DPDC stock investors also received a document titled
4 "Subscription for Shares" for one or all of their stock purchases. O'Malley, as President of DPDC,
5 signed Subscriptions given to at least 17 investors including seven Subscriptions that he co-signed
6 with Bjerken; Bjerken, as CFO of DPDC, signed Subscriptions given to at least 24 investors
7 including seven Subscriptions that he co-signed with O'Malley.

8 14. Each Subscription included the number of shares being purchased, the price of the
9 shares, and the signature of the subscriber.

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

13 16. The DPDC stock offering was not registered as a security with the Commission.

14 17. The 40 investors paid a total purchase price of \$842,630 for their DPDC stock.

15 18. Bjerken offered and sold DPDC stock to 39 of the 40 investors.

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

19 20. The 39 investors to whom Bjerken offered DPDC stock paid a total of \$837,630 for
20 their DPDC stock.

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

24 22. O'Malley offered and sold stock to 17 of the 40 investors; these 17 investors
25 received Subscriptions signed by O'Malley. These 17 investors consist of one investor who dealt
26

1 exclusively with O'Malley and 16 investors to whom O'Malley and Bjerken jointly offered and
2 sold stock.

3 23. The 17 investors to whom O'Malley offered and sold DPDC stock paid a total of
4 \$303,800 for their DPDC stock; this includes \$5,000 from the investor to whom O'Malley solely
5 sold DPDC stock.

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

8 Failure to disclose previous Commission orders and other actions

9 25. All respondents failed to disclose to investors previous actions involving Securities
10 Act violations.

11 26. In 1991, 1996, and 2003, the Commission entered orders against Bjerken for
12 violations of the Securities Act (the "Commission Action(s)").

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

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

1 \$119,000 in restitution, \$42,000 in penalties, and an additional \$5,000 penalty for violating the
2 Commission's 1991 order.

3 29. In the 2003 order, the Commission found that Bjerken, while not licensed with the
4 Commission, fraudulently offered and sold securities in the form of promissory notes. The
5 Commission also found that Bjerken violated the antifraud provisions of the Securities Act by
6 failing to disclose the 1991 and 1996 Commission orders to investors. This order required Bjerken
7 to pay \$8,234,144 in restitution and a \$10,000 penalty.

8 30. O'Malley was named as a respondent in the Commission's 1996 action involving
9 the Go Unified stock offering.

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

13 32. A second lawsuit against O'Malley involved O'Malley and Go United selling a
14 \$50,000 promissory note. This lawsuit resulting in a judgment against O'Malley of \$2,130 and
15 \$62,609.27 (\$50,000 of this was principal).

16 33. Respondents failed to disclose to investors the 1991, 1996 and 2003 orders and the
17 civil litigation, arbitration award and judgment against O'Malley. These orders and actions are also
18 not disclosed in the PPM.

19 Failure to disclose O'Malley's 2002 bankruptcy

20 34. In its PPM, DPDC touted O'Malley's significant business and financial experience
21 and expertise. This included stating that O'Malley graduated with a degree in business, oversaw the
22 expansion of a real-estate company into eight different states, built his own real-estate investment
23 company, and acquired a communications company in 1996. The PPM further describes O'Malley:
24 "Having spent his entire business career in real estate in one form or another, he understands the
25 ups and downs of the market and how to make them profitable depending on the cycle."
26

1 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
2 or deceit. Respondent's conduct includes the following:

3 a. Failing to disclose to investors the Commission actions resulting in orders against
4 Bjerken and the civil litigation and judgment against O'Malley described above;

5 b. Failing to disclose O'Malley's 2002 bankruptcy to the persons who received a PPM;
6 and

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

9 6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S.
10 § 44-2032.

11 7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
12 2032.

13 8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-
14 2036.

15 **III.**

16 **ORDER**

17 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's
18 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
19 that the following relief is appropriate, in the public interest, and necessary for the protection of
20 investors:

21 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
22 agents, employees, successors and assigns, permanently cease and desist from violating the
23 Securities Act.

24 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent and all
25 respondents against whom orders are entered awarding restitution under Docket No. S-20926A-15-
26 0116 shall jointly and severally pay restitution to the Commission in the principal amount of

1 \$842,630 (shown further detail in the attached *Exhibit A*), plus interest calculated pursuant to R14-
2 4-308(C)(1) from the date of this Order until paid in full, subject to legal setoffs pursuant to A.A.C.
3 R14-4-308. Payment is due in full on the date of this Order. Payment shall be made to the "State of
4 Arizona" to be placed in an interest-bearing account controlled by the Commission.

5 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
6 records of the Commission. Any restitution funds that the Commission cannot disburse because an
7 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
8 investor because the investor is deceased and the Commission cannot reasonably identify and
9 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
10 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
11 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
12 shall be transferred to the general fund of the state of Arizona.

13 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent shall pay an
14 administrative penalty in the amount of \$50,000 as a result of the conduct set forth in the Findings
15 of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be
16 made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.

17 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
18 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
19 shall be applied to the penalty obligation.

20 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
21 Respondent does not comply with this Order, any outstanding balance may be deemed in default
22 and shall be immediately due and payable.

23 IT IS FURTHER ORDERED, that if Respondent fails to comply with this Order, the
24 Commission may bring further legal proceedings against Respondent, including application to the
25 superior court for an order of contempt.

26

1 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
2 Order shall be deemed binding against any Respondent under this Docket Number who has not
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of
15 Phoenix, this _____ day of _____, 2015.

16 JODI JERICH
17 EXECUTIVE DIRECTOR

18
19 DISSENT

20
21 DISSENT

22 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
23 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

24 (RJM)
25
26

EXHIBIT A: Deer Park Development Corporation - Investor List

<u>Investor Count</u>	<u>State</u>	<u>Investment Date</u>	<u>Original Investment Amount</u>	<u>Unpaid Principal</u>	<u>Number of Shares</u>
1	TX	01/07/09	\$15,000.00	\$15,000.00	45,000
2	AZ	05/03/10	\$3,000.00	\$3,000.00	40,000
	AZ	08/20/10	\$2,000.00	\$2,000.00	35,000
	AZ	08/19/11	\$2,000.00	\$2,000.00	25,000
	AZ	03/13/12	\$2,000.00	\$2,000.00	20,000
3	AZ	01/07/09	\$25,000.00	\$25,000.00	100,000
4	AZ	01/07/09	\$10,000.00	\$10,000.00	30,000
	AZ	10/05/10	\$2,000.00	\$2,000.00	20,000
	AZ	08/19/11	\$5,000.00	\$5,000.00	60,000
	AZ	12/08/11	\$2,500.00	\$2,500.00	100,000
5	AZ	01/29/09	\$2,000.00	\$2,000.00	12,000
	AZ	10/05/10	\$2,000.00	\$2,000.00	20,000
6	MI	12/13/12	\$1,350.00	\$1,350.00	30,000
7	MI	03/15/13	\$1,500.00	\$1,500.00	500,000
8	MI	11/24/12	\$5,000.00	\$5,000.00	50,000
	MI	02/08/13	\$2,500.00	\$2,500.00	250,000
	MI	03/01/13	\$5,000.00	\$5,000.00	1,000,000
	MI	03/03/13	\$5,000.00	\$5,000.00	700,000
	MI	07/15/13	\$3,000.00	\$3,000.00	2,000,000
	MI	07/22/13	\$1,500.00	\$1,500.00	1,000,000
	MI	10/22/13	\$2,000.00	\$2,000.00	2,000,000
	MI	11/01/13	\$1,500.00	\$1,500.00	2,000,000
9	AZ	01/07/09	\$5,000.00	\$5,000.00	15,000
10	AZ	08/30/12	\$2,000.00	\$2,000.00	20,000
11	AZ	08/22/11	\$5,000.00	\$5,000.00	60,000
12	AZ	01/07/09	\$5,000.00	\$5,000.00	15,000
	AZ	04/12/11	\$10,000.00	\$10,000.00	100
	AZ	07/11/11	\$5,000.00	\$5,000.00	50,000
	AZ	08/11/11	\$5,000.00	\$5,000.00	85,000
	AZ	05/09/11	\$10,000.00	\$10,000.00	100,000
	AZ	07/26/11	\$5,000.00	\$5,000.00	50,000
13	AZ	07/09/10	\$5,000.00	\$5,000.00	40,000
	AZ	10/05/10	\$2,000.00	\$2,000.00	20,000
14	MI	03/15/13	\$3,000.00	\$3,000.00	2,000,000

1	15	AZ	10/21/12	\$2,000.00	\$2,000.00	20,000
	16	AZ	09/13/12	\$2,500.00	\$2,500.00	25,000
2	17	AZ	01/22/09	\$2,500.00	\$2,500.00	10,000
		AZ	02/09/09	\$2,500.00	\$2,500.00	10,000
3	18	MI	12/05/13	\$4,000.00	\$4,000.00	5,000,000
4	19	MI	01/21/13	\$3,000.00	\$3,000.00	30,000
		MI	01/28/13	\$2,000.00	\$2,000.00	20,000
5		MI	02/15/13	\$2,500.00	\$2,500.00	300,000
		MI	02/19/13	\$5,000.00	\$5,000.00	450,000
6		MI	03/02/13	\$2,500.00	\$2,500.00	250,000
7		MI	03/15/13	\$5,000.00	\$5,000.00	1,000,000
		MI	03/28/13	\$2,500.00	\$2,500.00	1,000,000
8		MI	04/07/13	\$2,500.00	\$2,500.00	1,000,000
9		MI	05/16/13	\$3,000.00	\$3,000.00	2,000,000
		MI	05/28/13	\$2,980.00	\$2,980.00	2,000,000
10		MI	06/13/13	\$1,500.00	\$1,500.00	1,000,000
11		MI	07/14/13	\$3,000.00	\$3,000.00	2,000,000
		MI	07/22/13	\$1,500.00	\$1,500.00	1,000,000
12		MI	08/24/13	\$3,000.00	\$3,000.00	1,000,000
13		MI	09/03/13	\$1,500.00	\$1,500.00	1,000,000
		MI	09/11/13	\$3,000.00	\$3,000.00	2,000,000
14		MI	10/21/13	\$2,000.00	\$2,000.00	2,000,000
15		MI	11/01/13	\$1,500.00	\$1,500.00	2,000,000
	20	AZ	08/09/11	\$5,000.00	\$5,000.00	50,000
16	21	AZ	08/22/11	\$10,000.00	\$10,000.00	100,000
17		AZ	09/19/11	\$10,000.00	\$10,000.00	120,000
		AZ	01/30/12	\$5,000.00	\$5,000.00	50,000
18	22	AZ	01/07/09	\$5,000.00	\$5,000.00	7,500
19	23	UT	10/05/10	\$2,000.00	\$2,000.00	20,000
		UT	03/07/11	\$2,000.00	\$2,000.00	20,000
20	24	AZ	01/10/09	\$5,000.00	\$5,000.00	20,000
21	25	AZ	11/09/12	\$2,500.00	\$2,500.00	25,000
	26	AZ	10/30/12	\$2,000.00	\$2,000.00	20,000
22	27	ND	12/28/09	\$5,000.00	\$5,000.00	25,000
23	28	OR	01/07/09	\$25,000.00	\$25,000.00	200,000
		OR	02/05/09	\$25,000.00	\$25,000.00	100,000
24		OR	02/27/09	\$40,000.00	\$40,000.00	200,000
25		OR	12/28/09	\$25,000.00	\$25,000.00	400,000
		OR	04/28/11	\$25,000.00	\$25,000.00	300,000
26		OR	04/28/11	\$20,000.00	\$20,000.00	300,000

1		OR	05/20/11	\$20,000.00	\$20,000.00	300,000
		OR	06/08/11	\$25,000.00	\$25,000.00	300,000
2		OR	08/19/11	\$5,000.00	\$5,000.00	75,000
		OR	10/05/11	\$5,000.00	\$5,000.00	100,000
3		OR	10/15/11	\$10,000.00	\$10,000.00	250,000
4	29	AZ	03/19/12	\$2,000.00	\$2,000.00	20,000
	30	AZ	01/07/09	\$5,000.00	\$5,000.00	7,500
5		AZ	01/23/09	\$2,500.00	\$2,500.00	10,000
		AZ	09/15/09	\$5,000.00	\$5,000.00	25,000
6		AZ	12/28/09	\$2,500.00	\$2,500.00	12,500
		AZ	06/01/10	\$5,000.00	\$5,000.00	60,000
7		AZ	10/05/10	\$5,000.00	\$5,000.00	50,000
8		AZ	10/25/10	\$15,000.00	\$15,000.00	1,000,000
9		AZ	03/08/11	\$50,000.00	\$50,000.00	2,020,000
		AZ	06/18/11	\$15,000.00	\$15,000.00	650,000
10		AZ	02/08/13	\$10,000.00	\$10,000.00	1,000,000
11	31	AZ	10/05/09	\$4,000.00	\$4,000.00	20,000
	32	AZ	01/07/09	\$10,000.00	\$10,000.00	15,000
12		AZ	10/06/10	\$2,000.00	\$2,000.00	20,000
13	33	AZ	01/07/09	\$25,000.00	\$25,000.00	200,000
		AZ	03/08/09	\$25,000.00	\$25,000.00	100,000
14	34	AZ	01/07/09	\$5,000.00	\$5,000.00	7,500
		AZ	01/23/09	\$2,500.00	\$2,500.00	10,000
15		AZ	09/15/09	\$5,000.00	\$5,000.00	25,000
16		AZ	12/28/09	\$2,500.00	\$2,500.00	12,500
		AZ	01/15/10	\$2,500.00	\$2,500.00	12,500
17		AZ	03/01/10	\$7,500.00	\$7,500.00	80,000
18		AZ	06/01/10	\$5,000.00	\$5,000.00	60,000
19		AZ	10/25/10	\$3,800.00	\$3,800.00	75,000
		AZ	03/08/11	\$35,000.00	\$35,000.00	352,000
20		AZ	09/14/11	\$2,500.00	\$2,500.00	10,000
		AZ	09/19/11	\$2,500.00	\$2,500.00	25,000
21		AZ	02/08/13	\$5,000.00	\$5,000.00	500,000
22	35	AZ	01/07/09	\$5,000.00	\$5,000.00	7,500
	36	AZ	01/07/09	\$25,000.00	\$25,000.00	100,000
23		AZ	02/24/09	\$25,000.00	\$25,000.00	215,000
24		AZ	01/25/10	\$8,000.00	\$8,000.00	10,000
	37	AZ	08/01/11	\$5,000.00	\$5,000.00	50,000
25	38	AZ	09/04/12	\$2,500.00	\$2,500.00	25,000
26		AZ	12/09/12	\$2,500.00	\$2,500.00	25,000

39	AZ	09/22/11	\$2,500.00	\$2,500.00	10,000
40		12/11/12	\$2,500.00	\$2,500.00	25,000

Totals: **\$842,630.00** **\$842,630.00**

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1 SERVICE LIST FOR: Deer Park Development Corporation, *et al.*

2
3 Joseph C. Crary, Esq.
4 2339 West Monte Avenue
5 Mesa, AZ 85202
6 *Attorney for the O'Malleys*

7 Marty O'Malley
8 c/o Joseph C. Crary, Esq.
9 2339 West Monte Avenue
10 Mesa, AZ 85202
11 *Officer of Respondent DPDC*

12 Robert Bjerken
13 P.O. Box 2921
14 Scottsdale, AZ 85252
15 *Respondent*

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

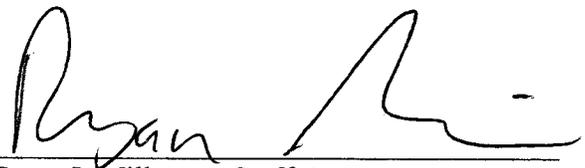
In the matter of:)
Deer Park Development Corporation,)
Marty O'Malley and Julie Unruh O'Malley,)
husband and wife,)
Robert D. Bjerken,)
Respondents.)

DOCKET NO. S-20926A-15-0116

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same Re: Marty O'Malley and Julie Unruh O'Malley was filed with the Arizona Corporation Commission's Docket Control.

Dated: 11/3/15

By: 
Ryan J. Millecam, Staff Attorney

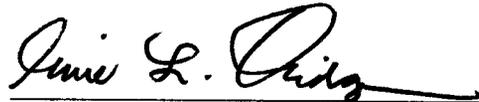
Decision No. _____

1 I hereby certify that I have this day served the foregoing document on all parties of record in
2 this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

3 Joseph C. Crary, Esq.
4 2339 West Monte Avenue
5 Mesa, AZ 85202
Attorney for the O'Malleys

6 Robert Bjerken
7 P.O. Box 2921
8 Scottsdale, AZ 85252
Respondent

9
10 Dated: 11/3/15

By: 
Emie R. Bridges, Executive Assistant