

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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2015 DEC 30 P 1:16

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:
Shadow Beverages and Snacks, LLC, an
Arizona limited liability company,
Lucio George Martinez and Lisa K. Martinez,
husband and wife,
Samuel A. Jones, a married man,
Respondents.

DOCKET NO. S-20948A-15-0422

**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 Shadow Beverages and Snacks, LLC, Lucio George Martinez, and Samuel A. Jones 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 Lucio George Martinez and Samuel A. Jones directly or indirectly controlled Shadow Beverages and Snacks, LLC within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under A.R.S. § 44-1999 to the same extent as Shadow Beverages and Snacks, LLC for its violations of A.R.S. § 44-1991.

Arizona Corporation Commission

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I.

JURISDICTION

DOCKETED BY [Signature]

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

1 **II.**

2 **RESPONDENTS**

3 2. Shadow Beverages and Snacks, LLC (“Shadow”) is a limited liability company that has
4 been organized under the laws of the state of Arizona since July 2008. Shadow has been based in Arizona
5 since it was created. Shadow has not been registered by the Commission as a securities salesman or
6 dealer.

7 3. Since at least June 1, 2009, Lucio George Martinez (“Martinez”) has been a married man
8 and a resident of the state of Arizona. Martinez has not been registered by the Commission as a securities
9 salesman or dealer.

10 4. Since at least June 1, 2009, Samuel A. Jones (“Jones”) has been a married man and a
11 resident of the state of Connecticut. Jones has not been registered by the Commission as a securities
12 salesman or dealer.

13 5. Shadow, Martinez, and Jones may be referred to collectively as “Respondents.”

14 6. Since March 17, 1997, Lisa K. Martinez has been the spouse of Respondent Lucio
15 George Martinez (Lisa K. Martinez may be referred to as “Respondent Spouse”). Respondent Spouse
16 is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of her
17 marital community.

18 7. At all times relevant, Respondent Martinez was acting for his own benefit and for the
19 benefit or in furtherance of his and Respondent Spouse’s marital community.

20 **III.**

21 **FACTS**

22 8. Shadow created and built product brands for the beverage and snack industry,
23 including products such as energy beverages, nutritional supplement beverages, and preserved meat
24 snacks. It contracted with bottlers to produce products that it sold to retailers. Shadow was a
25 functioning business when each of the relevant investors invested. Shadow ceased operations in early
26 2015. At its peak, Shadow had approximately 23 employees.

1 9. Martinez and Jones founded Shadow. Martinez has been a member of the Shadow
2 board of managers since July 25, 2008. Jones was a member of the Shadow board of managers from
3 at least July 25, 2008, until approximately May 14, 2013.

4 10. Martinez has been the President of Shadow since at least January 29, 2010. Martinez's
5 responsibilities as President of Shadow were day-to-day management of sales and operations and
6 overseeing administration.

7 11. Jones was the Chief Executive Officer ("CEO") of Shadow from at least January 29,
8 2010, to at least May 16, 2011. Jones's responsibilities as CEO included overseeing business strategy
9 and partnerships and looking for new business.

10 12. By August 2011, Jones became the Chief Operating Officer ("COO") of Shadow and
11 remained so until approximately May 14, 2013. Jones's responsibilities as COO included business
12 development and operation of the product lines, such as beverage formulation and packaging. When
13 Jones ceased to be COO, Martinez became COO in addition to being President.

14 13. On June 1, 2009, a nonresident investor ("Investor A") invested \$50,000 in a Shadow
15 promissory note signed by Martinez. Martinez met with the investor in Arizona about making this
16 investment. The note offered 15% annual interest and was due on December 31, 2009. Shadow
17 defaulted on this note on that date. This note remained unpaid for over two years until August 15,
18 2012.

19 14. On February 17, 2010, an Arizona investor ("Investor B") invested \$50,000 in a
20 Shadow promissory note signed by Jones. Before investing, this investor was not informed of
21 Shadow's default on Investor A's note. The note offered 25% annual interest and was due on August
22 17, 2010. Shadow defaulted on this note on that date. Martinez and Jones personally guaranteed
23 payment of this note but never personally made any payment for this note. On May 17, 2011, a
24 judgment was entered in the Maricopa Superior Court against Shadow, Martinez, Jones, and other
25 defendants in favor of this investor. This note was eventually fully paid by Shadow in 2011.

26

1 15. Investor B made a second investment, investing \$200,000 more on March 17, 2010,
2 in a Shadow promissory note signed by Martinez. In a loan agreement signed by Martinez and Jones
3 in connection with the investment, Shadow stated that it was not in default on any indebtedness for
4 borrowed money. Actually, Shadow had been in default on Investor A's note since December 31,
5 2009. The note offered 25% annual interest and was due on September 17, 2010. Shadow defaulted
6 on this note on that date. This note was eventually fully paid by Shadow in 2011.

7 16. On September 1, 2010, a nonresident investor ("Investor C") invested \$75,000 in a
8 Shadow promissory note signed by Martinez and Jones. Martinez and Jones met with the investor in
9 Arizona about making this investment. Before investing, this investor was not informed of Martinez
10 and Jones's failure to perform on a previous personal guarantee for a Shadow note. The note offered
11 15% annual interest and was due on December 31, 2010. Shadow defaulted on this note on that date.
12 Martinez and Jones personally guaranteed this note but never personally made any payments for this
13 note. This note was eventually fully paid by Shadow in 2011.

14 17. On January 3, 2011, an Arizona investor ("Investor D") invested \$125,000 in a
15 Shadow promissory note signed by Martinez and Jones. Martinez and Jones met with the investor in
16 Arizona about making this investment. Before investing, this investor was not informed of Shadow's
17 defaults on previous notes. The note offered 10% annual interest and was due on March 1, 2011.
18 Shadow defaulted on this note on that date. This note was eventually fully paid by Shadow in 2011.

19 18. On January 14, 2011, an Arizona investor ("Investor E") invested \$100,000 in a
20 Shadow promissory note signed by Martinez and Jones. Before investing, this investor was not
21 informed of Shadow's defaults on previous notes. The note offered 10% annual interest and was due
22 on December 31, 2011. To date, Shadow has made two payments for the note totaling approximately
23 \$5,000.

24 19. In approximately August 2011, Shadow received approximately \$2,000,000 from an
25 equity investment in membership units by a group of beverage industry executives. Shadow used
26 these funds to fully pay the principal balances of some of the above notes.

1 20. On October 15, 2012, Shadow signed a \$1,000,000 factoring agreement with a bank.
2 In the agreement, Shadow granted the bank a security interest in collateral that included all present
3 and future accounts receivable and proceeds of Shadow's inventory, which the bank recorded. The
4 bank continued to hold this security interest until October 29, 2014.

5 21. On March 7, 2013, a nonresident investor ("Investor F") invested \$500,000 in a
6 Shadow promissory note signed by Martinez. Martinez and Jones met with the investor in Arizona
7 about making this investment. The investor also received a security interest in Shadow's product
8 inventory and accounts receivable. Before investing, this investor was not informed of Martinez and
9 Jones' failure to perform on previous personal guarantees for Shadow notes or the existing security
10 interests in Shadow's product inventory and accounts receivable. The note offered interest of \$25,000
11 every 30 days and was due on May 6, 2013. Shadow defaulted on this note on that date. Martinez
12 and Jones personally guaranteed this note but never personally made any payments for this note.
13 Shadow has never made any payments for this note.

14 22. On April 5, 2013, a nonresident investor ("Investor G") invested \$250,000 in a
15 Shadow promissory note signed by Martinez. The investor also received a security interest in
16 Shadow's product inventory and accounts receivable. Martinez communicated with the investor
17 about making this investment. Before investing, this investor was not informed of Shadow's defaults
18 on previous notes or the existing security interests in Shadow's product inventory and accounts
19 receivable. The note offered 12% annual interest and was due on April 5, 2014. Shadow defaulted on
20 this note on that date. Shadow has never made any payments for this note.

21 23. Investor G invested a second time, investing \$250,000 on April 17, 2014, in the name
22 of the investor's limited liability company, in a Shadow promissory note signed by Martinez. Before
23 investing, this investor was not informed of Shadow's defaults on other investors' notes or a recent
24 \$1,400,000 judgment against Shadow. The note offered a fixed sum of \$20,000 in interest and was
25 due on May 19, 2014. Shadow defaulted on this note on that date. Shadow has never made any
26 payments for this note.

1 24. On December 6, 2013, two Arizona investors (“Investors H and I”) invested \$25,000
2 in a loan agreement with Shadow signed by Martinez. The loan agreement was an investment made
3 for the purpose of making a profit. The investors received a security interest in some of Shadow’s
4 accounts receivable. Before investing, these investors were not informed of Shadow’s previous
5 defaults on its notes or the existing security interests in Shadow’s accounts receivable. These
6 investors never had any management role at Shadow. Consideration for the loan was \$5,000 to be
7 paid based on the rate of Shadow’s product sales. The loan did not have a fixed maturity date, but
8 payments based on product sales were due beginning two weeks after the first receipt of sale proceeds
9 from products funded by the loan, and the first payment was due on approximately March 6, 2014.
10 Shadow defaulted on this loan on that date. Shadow has never made any payments for this loan.

11 25. Investors H and I invested a second time, investing \$50,000 on May 9, 2014, in the
12 name of their limited liability company. They invested in a Shadow promissory note signed by
13 Martinez. Before investing, the investors were not informed of Shadow’s defaults on previous notes
14 or a recent \$1,400,000 judgment against Shadow. The note offered a fixed sum of \$10,000 in interest
15 and was due on September 8, 2014. Shadow defaulted on this note on that date. Shadow has never
16 made any payments for this note.

17 26. On January 13, 2014, a nonresident investor (“Investor J”) invested \$30,000 in a
18 Shadow promissory note signed by Martinez. Before investing, this investor was not informed of
19 Shadow’s defaults on previous notes. The noted offered a fixed sum of \$2,500 in interest and was
20 due on April 13, 2014. Shadow defaulted on this note on that date. Shadow has never made any
21 payments for this note.

22 27. On January 12, 2014, a nutrition company was awarded a \$1,400,000 default
23 judgment against Shadow (“Nutrition Company Judgment”) that has not been paid.

24 28. On January 15, 2014, two Arizona investors (“Investors K and L”) invested \$50,000
25 in a Shadow promissory note signed by Martinez. Before investing, these investors were not informed
26 of Shadow’s defaults on previous notes, Martinez’s failure to perform on prior personal guarantees,

1 or the Nutrition Company Judgment. The note offered a fixed sum of \$7,500 in interest and was due
2 on July 15, 2014. Shadow defaulted on this note on that date. Martinez personally guaranteed
3 payment of this note, but on information and belief he never personally made any payments for this
4 note. Shadow has never made any payments for this note.

5 29. On March 21, 2014, an Arizona investor ("Investor M") invested \$115,000 in a
6 Shadow promissory note signed by Martinez and Jones. This investor received a security interest in
7 Shadow's accounts receivable and some of its product inventory. Martinez provided the investor with
8 a personal financial statement that misrepresented that Martinez was not a guarantor for any
9 company, misrepresented that no judgment had ever been entered against him, and omitted his
10 personal guarantees of outstanding Shadow notes from a list of his personal liabilities. Before
11 investing, this investor was not informed of Shadow's defaults on previous notes, the existing
12 security interests in Shadow's accounts receivable and product inventory, or the Nutrition Company
13 Judgment. The note offered interest of up to \$10,000 based on the volume of Shadow's product sales
14 within a specific timeframe, and the note was due on September 21, 2014. Shadow defaulted on this
15 note on that date. To date, Shadow and Martinez have made payments totaling \$40,000 for the note.

16 30. On July 18, 2014, an investor of unknown residence ("Investor N") invested \$50,000
17 in a Shadow promissory note signed by Martinez. Before investing, this investor was not informed
18 of Shadow's defaults on previous notes, Martinez's failure to perform on prior personal guarantees,
19 or the Nutrition Company Judgment. The note offered a fixed sum of \$7,500 in interest and was due
20 on October 18, 2014. Shadow defaulted on this note on that date. Martinez personally guaranteed
21 payment of this note, but on information and belief he never personally made any payments for this
22 note. Shadow has never made any payments for this note.

23 31. On July 18, 2014, a nonresident investor ("Investor O") invested \$100,000 in a
24 Shadow promissory note signed by Martinez. Before investing, this investor was not informed of
25 Shadow's defaults on previous notes, Martinez's failure to perform on prior personal guarantees, or
26 the Nutrition Company Judgment. The note offered a fixed sum of \$15,000 in interest and was due

1 on October 17, 2014. Shadow defaulted on this note on that date. Martinez personally guaranteed
2 payment of this note, but on information and belief he never personally made any payments for this
3 note. Shadow has never made any payments for this note.

4 32. Shadow raised a total of \$2,020,000 from Investors A through O. Shadow and
5 Martinez have paid back approximately \$545,000 in principal payments to investors.

6 33. Shadow found investors among its employees' contacts and from contacts of those
7 contacts.

8 34. Shadow never gave any guidelines to its employees about what they were allowed or
9 required to tell prospective investors about Shadow.

10 35. A particular Shadow employee was a significant source for finding new investors, and
11 Shadow offered him commissions for finding investors. Shadow eventually gave him the title of
12 Senior Vice President of Capital Acquisition. Shadow did not instruct this employee about any limits
13 or guidelines on how he was allowed to find investors. This employee's efforts included asking his
14 contacts to suggest potential investors to him from among their contacts.

15 36. Shadow never inquired whether note investors were investing for their own account.

16 **IV.**

17 **VIOLATION OF A.R.S. § 44-1841**

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

19 37. From on or about June 1, 2009, Respondents Shadow and Martinez offered or sold
20 securities in the form of notes and an investment contract, within or from Arizona.

21 38. From on or about February 17, 2010, to on or about March 4, 2014, Respondent Jones
22 offered or sold securities in the form of notes, within or from Arizona.

23 39. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
24 Securities Act.

25 40. This conduct violates A.R.S. § 44-1841.

26

