

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOUG LITTLE - Interim Chairman
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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

In the matter of:
BART J. ELLIS and COLLEEN ELLIS,
husband and wife,
OAK CAPITAL PARTNERS, LLC, an
Arizona limited liability company,
Respondents.

DOCKET NO. S-20949A-16-0002
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**

1. The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Bart J. Ellis and Oak Capital Partners, LLC ("OCP") 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") and the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

2. Ellis and OCP may be referred to collectively as "Respondents."

I.

JURISDICTION

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

II.

RESPONDENTS

4. Respondent Bart J. Ellis is a married man who resided in Arizona from October 2012, through at least April 2015.

Arizona Corporation Commission
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1 13. After moving to Arizona and forming OCP, Respondents did not register as securities
2 salesmen or dealers and did not obtain licenses as investment advisers or investment adviser
3 representatives with the Commission.

4 14. In a business charter signed by Ellis, Ellis describes OCP's business as follows:

5 a) OCP is an "investment/trading operation specializing in Futures, Options of
6 Futures and Equity Option Trading."

7 b) OCP's business is to manage a portfolio that includes these assets.

8 c) OCP's goal is "achieving 15% per year."

9 d) Ellis has gained a unique edge through 15 years of trading and managing
10 assets. Because of what he learned about hedging portfolios from market risk in these 15 years, "Ellis
11 found the need to form a trading group [i.e. OCP] to profit from his unique buisness [sic]
12 background."

13 e) OCP's manager (Ellis) will make a monthly withdrawal "in order to maintain
14 operating [sic] cost of business, this cost will come from positive cash flow only."

15 15. Respondents acted as securities dealers and provided investment advisory services to
16 the four clients described below (collectively, the "Clients").

17 16. Client 1 is an Illinois resident in her 60s. Ellis provided investment advisory services
18 to Client 1 while Ellis worked at Ameriprise. While Ellis's client at Ameriprise, Client 1's investment
19 goals included only "moderate" risk tolerance and "growth" of her assets.

20 17. Ellis did not tell Client 1 that Ameriprise had fired him or that he was no longer
21 licensed to broker securities transactions. Instead, in approximately October 2012, Ellis informed
22 Client 1 that he was going into business for himself and would be working through OCP. Ellis advised
23 Client 1 to sell her existing investments—including stocks, equities, and other securities—and
24 transfer the sale proceeds to accounts controlled by Ellis and OCP. Ellis informed Client 1 that he
25 would invest her funds in certificates of deposit and other low-risk financial assets selected by
26 Respondents.

1 18. Based on Ellis's representations, from November 2012 through April 2014, Client 1
2 sold her investment assets including stocks and other securities. From the proceeds of these sales,
3 Client 1 wrote seven checks and made two wire transfers to OCP totaling \$905,000. Ellis deposited
4 all checks in, and both wire transfers went to, OCP's bank accounts.

5 19. Around March 2014, Client 1 requested that Ellis send her documents showing her
6 investments. In response, several weeks later Ellis mailed Client 1 a document titled "Investment
7 Report" for the month of March 2014. He later mailed Client 1 reports for May 2014 and October
8 2014.

9 20. All three reports were on stationary labeled "Oak Capital, LLC." The reports listed
10 Ellis as "Your financial advisor." Each report showed that Client 1's assets under Oak Capital
11 management had increased in value during the given month.

12 21. Each report included a list of financial assets supposedly held in the account, including
13 HSBC notes earning set interest rates. This was fraudulent: bank records show that Ellis either spent
14 Client 1's funds on personal expenses or deposited the funds into a trading account with Interactive
15 Brokers that did not include such notes.

16 22. The October report showed that Client 1's account included stock in publicly-traded
17 corporations like Intel and Tesla Motors; the report showed that total value of this stock was
18 \$320,360. However, OCP did not own such stock: OCP's assets for that month consisted of
19 \$117,240.91 cash in its Interactive Brokers account and \$322.77 cash in its Wells Fargo account.

20 23. Client 2 resides in Scottsdale, Arizona, and frequently works in Chicago, Illinois. Ellis
21 was Client 2's investment adviser from 2010 through 2012, while Ellis worked at Ameriprise. After
22 Ellis moved to Arizona in 2012, Ellis told Client 2 that Ellis had formed his own company, OCP.
23 Client 2 invested \$27,500 with Respondents on February 19, 2014. Respondents told Client 2 that
24 they would select investments for Client 2 to earn back money that Ellis had lost for Client 2 when
25 Ellis worked at Ameriprise. Ellis deposited Client 2's check in OCP's bank account at FirstBank's
26 Scottsdale location. In May 2014, Respondents paid Client 2 a \$17,500 check as a return on his

1 investment. The funds for this check came from Client 1's investing \$390,000 with Respondents on
2 April 6, 2014.

3 24. Client 3 is a now-deceased elderly woman who resided in Illinois. Ellis was Client 3's
4 investment adviser for several years while Ellis worked for Ameriprise. After Ameriprise fired Ellis
5 and Ellis moved to Arizona, he and OCP continued to act as Client 3's investment adviser. In January
6 and June 2013, Client 3 wrote two checks to OCP for \$80,000 and \$40,000 respectively. Ellis
7 deposited both checks into OCP's account at a Scottsdale branch of FirstBank. Client 3 expected
8 Ellis to invest her funds in investments that were not risky, and Ellis wrote Client 3 to send him
9 checks "payable to Oak Capital for the CD."

10 25. Client 4 is a now-deceased elderly man from Wisconsin. Ellis was Client 4's
11 investment adviser for several years while Ellis worked for Ameriprise. After Ameriprise fired Ellis,
12 he and OCP continued to act as Client 4's investment adviser. This former client wrote a \$70,000
13 check to OCP which Ellis deposited in a Scottsdale Branch of FirstBank on March 1, 2013.

14 26. Ellis deposited the funds he received from the Clients into two OCP bank accounts,
15 one at FirstBank and later, an account at Wells Fargo.

16 27. Ellis opened OCP's business account and a personal account at FirstBank on October
17 31, 2012, at a FirstBank branch in Scottsdale. Ellis was the only signatory on the accounts. Ellis used
18 the Chaparral Road address as his home address in the account registration forms.

19 28. In July 2014, FirstBank required Ellis to close his and OCP's accounts.

20 29. On July 29, 2014, Ellis withdrew the remaining \$127,996.05 balance in OCP's
21 FirstBank account with a cashier's check.

22 30. On August 11, 2014, Ellis opened a business bank account for OCP at Wells Fargo's
23 Gainey Ranch location in Scottsdale. Ellis is the sole signor of the account. In the account application,
24 Ellis stated that OCP's address was in Paradise Valley and that Ellis's address was the address of the
25 Scottsdale home where Ellis's family resided and where he was paying rent (described below). In the
26 account application, Ellis described OCP as being a "Capital Advisor Group" in the "Finance and

1 Insurance” industry with annual revenue of \$500,000. Ellis deposited the \$127,996.05 FirstBank
2 cashier’s check to open the Wells Fargo account.

3 31. From the October 2012 through March 2015, Ellis deposited a total of \$1,127,146 into
4 OCP’s FirstBank and Wells Fargo accounts. All but \$4,646 of the deposits came from the Clients
5 described above.

6 32. A review of OCP’s and Ellis’s bank accounts shows that Respondents did not use the
7 Client funds to purchase certificates of deposit or conservative investments. Rather, Respondents
8 transferred about half of the deposits from OCP’s bank account to a trading account with Interactive
9 Brokers where Ellis eventually lost all the money. The other half of Clients’ funds went to Ellis’s
10 personal expenditures.

11 33. Ellis opened the Interactive Brokers account for OCP in November 2012. Ellis was
12 the sole person authorized to use the account. And the account was only authorized to trade in stocks,
13 options, warrants, Forex, futures and futures options.

14 34. OCP transferred a net of \$567,916 from its bank accounts into its Interactive Brokers
15 accounts.

16 35. OCP’s day-trading did not go well. Over 28 months of purchasing and selling assets
17 that included stocks, mutual funds, and other securities, OCP experienced gains from trading in only
18 five months. These gains totaled \$54,145. In the other 23 months, Respondents lost a total of
19 \$538,239 from their trading activities. They also paid \$78,341 in fees and other expenses. By
20 February 28, 2015, the value of the account’s assets was \$9,679.82.

21 36. At no point did Respondents disclose to the Clients that Client funds were being used
22 for day-trading activities, much less the enormous monthly losses resulting from this trading.

23 37. Respondents spent the other half of the Clients’ funds on items not related to any
24 investments, primarily on Ellis’s personal expenses, including the following:
25
26

1 a) On February 21, 2013, OCP wrote a \$34,058 check signed by Ellis to the
2 owner of the Scottsdale residence that Respondent Spouse was renting; the money was for one year
3 of rent.

4 b) On June 27, 2014, OCP again paid Ellis's family's rent when it wired \$26,500
5 to the owners of the Scottsdale residence where Ellis's family resided at the time.

6 c) From September 2014 to February 2015, OCP made six additional rent
7 payments, each for \$2,625, via wire transfers to the owner of the property where Ellis's family
8 resided.

9 d) On January 30, 2014, OCP wrote a check, signed by Ellis, to "Earnhart +
10 Scottsdale Lexus" for \$24,747.24.

11 e) On February 24, 2014, OCP paid \$4,992.00 to the Shaw Center for Aesthetic
12 Enhancement, a plastic surgery center in Scottsdale, Arizona.

13 f) On April 19, 2014, OCP wrote a check for \$8,014.64 signed by Ellis to "A
14 Vacation by the Bay," a San Diego vacation property rental company.

15 g) On May 4, 2014, OCP wrote a \$17,500 check signed by Ellis to Client 2.

16 h) From November 2012 through March 2015, Ellis withdrew \$80,244 in cash
17 from OCP's accounts.

18 i) From November 2012 through March 2015, Ellis spent \$31,183 from OCP's
19 accounts in restaurants, made \$40,981 of retail purchases, paid utilities bills totaling \$19,723,
20 transferred \$41,205 to himself for personal expenses and cash withdrawals, and had an additional
21 \$36,126 of credit card activity.

22 38. In addition to not using Client funds as represented, Respondents failed to make at
23 least two disclosures to Clients that were material to assessing Ellis's qualifications to be an
24 investment adviser or to purchase and sell securities.

25 a) First, as noted above, Respondents did not inform the Clients that Ameriprise
26 fired Ellis for violating company rules.

1 VI.

2 VIOLATION OF A.R.S. § 44-3151

3 (Transactions by Unlicensed Investment Advisers
4 or Investment Adviser Representatives)

5 5. Respondents transacted business in Arizona as investment advisers or investment adviser
6 representatives while not licensed or in compliance with Article 4 of the IM Act.

7 6. This conduct violates A.R.S. § 44-3151.

8 VII.

9 VIOLATION OF A.R.S. § 44-3241

10 (Fraud in the Provision of Investment Advisory Services)

11 7. Respondents engaged in a transaction or transactions within or from Arizona involving
12 the provision of investment advisory services in which Respondents, directly or indirectly: (i) employed
13 a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state
14 material facts that were necessary in order to make the statements made not misleading in light of the
15 circumstances under which they were made; (iii) misrepresented professional qualifications with the
16 intent that the client rely on the misrepresentation; or (iv) engaged in transactions, practices, or courses
17 of business that operated or would operate as a fraud or deceit. Respondents' conduct includes, but is
18 not limited to, the following:

19 a) Representing to Clients that Respondents would invest their money in
20 conservative investments, then spending client funds on personal expenses and day-trading;

21 b) Failing to disclose to Clients that OCP's day-trading efforts had resulted in losing
22 almost every dollar used in such efforts;

23 c) Failing to disclose to Clients that Ellis was fired from his position at Ameriprise
24 and instead stating that he was going into business for himself;

25 d) Failing to disclose that Ellis had filed for bankruptcy in 2012;

26

1 e) Sending fraudulent investment reports to Client 1 showing that her funds were
2 invested in notes and public stock when in fact her funds had been spent on Ellis's personal expenses
3 and day-trading.

4 8. This conduct violates A.R.S. § 44-3241.

5 **VIII.**

6 **REQUESTED RELIEF**

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

8 1. Order Respondents to permanently cease and desist from violating the Securities Act and
9 the IM Act, pursuant to A.R.S. §§ 44-2032 & 44-3292;

10 2. Order Respondents to take affirmative action to correct the conditions resulting from
11 Respondents' acts, practices, or transactions, including a requirement to pay restitution in the amount of
12 \$1,105,000 (i.e. the \$1,122,500 from Clients, less the \$17,500 returned to Client 3), pursuant to A.R.S.
13 §§ 44-2032 & 44-3292;

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

16 4. Order Respondents to pay the state of Arizona administrative penalties of up to \$1,000
17 for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

18 5. Order that the marital community of Ellis and Respondent Spouse be subject to any order
19 of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to
20 A.R.S. § 25-215; and

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

22 **IX.**

23 **HEARING OPPORTUNITY**

24 Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S. §§ 44-
25 3212 & 44-3212 and A.A.C. R14-4-306. **If a Respondent or Respondent Spouse requests a hearing,**
26 **the requesting respondent must also answer this Notice.** A request for hearing must be in writing and

1 received by the Commission within 10 business days after service of this Notice of Opportunity for
2 Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
3 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be
4 obtained from Docket Control by calling (602) 542-3477 or on the Commission's web site at
5 <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

17 **X.**

18 **ANSWER REQUIREMENT**

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

25 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
26 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a

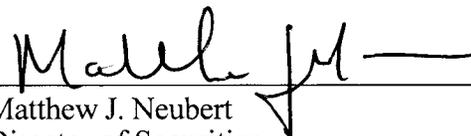
1 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
2 addressed to Ryan J. Millecam.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the
4 original signature of the answering respondent or respondent's attorney. A statement of a lack of
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
6 denied shall be considered admitted.

7 When the answering respondent intends in good faith to deny only a part or a qualification of
8 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit
9 the remainder. The answering respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an Answer
11 for good cause shown.

12 Dated this 8 day of January, 2016.

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15 _____
16 Matthew J. Neubert
17 Director of Securities
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