

OPEN MEETING ITEM



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DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: MARCH 24, 2016

DOCKET NO.: S-20916A-14-0328

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Mark Preny. The recommendation has been filed in the form of an Opinion and Order on:

MICHELLE LEE WAGNER  
(SECURITIES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 4, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 12, 2016 AND APRIL 13, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

  
JODI A. JERICH  
EXECUTIVE DIRECTOR

Arizona Corporation Commission  
**DOCKETED**

MAR 24 2016

DOCKETED BY 

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 DOUG LITTLE – Chairman  
4 BOB STUMP  
5 BOB BURNS  
6 TOM FORESE  
7 ANDY TOBIN

8 In the matter of:  
9 MICHELLE LEE WAGNER (CRD No. 2403647),  
Respondent.

DOCKET NO. S-20916A-14-0328

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF PRE-HEARING CONFERENCES: October 21, 2014

11 DATE OF HEARING: March 4, 2015

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Mark Preny

14 APPEARANCES: Mr. J. Murray Zeigler, ZEIGLER LAW  
15 GROUP, PLC, on behalf of Respondent  
16 Michelle Lee Wagner; and

17 Mr. Ryan J. Millecam, Staff Attorney, Securities  
18 Division of the Arizona Corporation  
19 Commission.

18 **BY THE COMMISSION:**

19 On September 11, 2014, the Securities Division (“Division”) of the Arizona Corporation  
20 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order of  
21 Revocation/Suspension, to Cease and Desist, for Restitution, and for Administrative Penalties  
22 (“Notice”) against Michelle Lee Wagner (“Wagner” or “Respondent”), in which the Division alleged  
23 violation of the Arizona Securities Act (“Act”) in connection with the execution of promissory notes,  
24 deeds of trust, or loans.

25 The Respondent was duly served with a copy of the Notice.

26 On September 25, 2014, Respondent filed an Answer to Notice of Opportunity for Hearing  
27 Regarding Proposed Order of Revocation/Suspension, to Cease and Desist, for Restitution, and for  
28

1 Administrative Penalties (“Answer”). The Respondent also filed a Request for Hearing pursuant to  
2 A.R.S. § 44-1972 and A.A.C. R14-4-306.

3 On September 26, 2014, by Procedural Order, a pre-hearing conference was scheduled for  
4 October 21, 2014.

5 On October 21, 2014, the Division and the Respondent appeared through counsel. The parties  
6 requested a hearing be scheduled and agreed to the date of March 2, 2015.

7 On October 21, 2014, by Procedural Order, a hearing was scheduled to commence on March  
8 2, 2015.

9 On January 13, 2015, by Procedural Order, the hearing was continued to March 4, 2015.

10 On March 2, 2015, the parties filed Joint Fact Stipulations.

11 On March 4, 2015, a full public hearing was commenced before a duly authorized  
12 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and  
13 the Respondent were represented by counsel. At the conclusion of the hearing, a schedule for the  
14 filing of post-hearing briefs was established whereby the Division would file an initial brief by April  
15 20, 2015, the Respondent would file a response by May 20, 2015, and the Division would file a reply  
16 by June 4, 2015.

17 On April 20, 2015, the Securities Division filed its Post-Hearing Brief.

18 On May 21, 2015, Respondent filed a Post-Hearing Brief and Response to Securities  
19 Division’s Post-Hearing Brief (“Response Brief”).

20 On June 4, 2015, the Division filed a Reply Brief.

21 \* \* \* \* \*

22 **DISCUSSION**

23 **I. Brief Summary**

24 This is an enforcement action brought against Respondent Michelle Lee Wagner for an  
25 alleged violation of the Arizona Securities Act. Ms. Wagner has been registered as a securities  
26 salesman in Arizona since 1998. The Division contends that Ms. Wagner engaged in dishonest or  
27 unethical practices in the securities industry by borrowing \$400,000 from a customer, in violation of  
28 A.R.S. § 44-1962(A)(10) and A.A.C. R14-4-130(A)(15). The Division requests revocation of the

1 Respondent's salesman registration. The Division further requests that the Respondent be ordered to  
2 pay restitution in the amount of \$96,666.76, plus interest, and an administrative penalty not to exceed  
3 \$5,000.

4 The Respondent concedes having obtained a loan from a customer, the action alleged by the  
5 Division as the basis of the violation. However, the Respondent contends that the totality of the  
6 circumstances warrants the imposition of lesser sanctions than those sought by the Division. The  
7 Respondent requests that sanctions be limited to a Cease and Desist Order prohibiting similar conduct  
8 in the future. The Respondent further requests that restitution not be ordered.

## 9 **II. Testimony**

### 10 Steven Steger

11 Mr. Steger testified that he is a financial institution examiner employed by the Securities  
12 Division of the Arizona Corporation Commission.<sup>1</sup> In that capacity, Mr. Steger testified that he  
13 conducted an examination of Ms. Wagner's branch office of Crown Capital Securities ("Crown  
14 Capital") in March 2014.<sup>2</sup> Mr. Steger testified that Ms. Wagner was a registered representative of  
15 Crown Capital, meaning that she was licensed with the State of Arizona to sell securities and that she  
16 was employed by Crown Capital.<sup>3</sup>

17 Mr. Steger testified that Lawrence Pritchard had five accounts with Crown Capital.<sup>4</sup> These  
18 accounts were managed by Ms. Wagner.<sup>5</sup> Mr. Steger testified that Ms. Wagner denied having sold a  
19 promissory note, but she admitted borrowing money from her client, Mr. Pritchard.<sup>6</sup> Ms. Wagner  
20 told Mr. Steger that she had made payments to Mr. Pritchard pursuant to the terms of a promissory  
21 note.<sup>7</sup>

### 22 Dulance Morin

23 Mr. Morin testified that he is a special investigator employed by the Securities Division of the  
24

25 <sup>1</sup> Tr. at 12-13.

26 <sup>2</sup> *Id.* at 13.

27 <sup>3</sup> *Id.* at 13-14. At the time of the hearing, Ms. Wagner had been an employee of Crown Capital since July 28, 2003. Tr. at  
14; Exh. S-2.

28 <sup>4</sup> Tr. at 15; Exh. S-3.

<sup>5</sup> Tr. at 15.

<sup>6</sup> Tr. at 15-20; Exh. S-7.

<sup>7</sup> Tr. at 18.

1 Arizona Corporation Commission.<sup>8</sup> In that capacity, Mr. Morin did a background investigation of  
 2 Ms. Wagner based upon a complaint filed by Mr. Pritchard.<sup>9</sup> As part of his investigation, Mr. Morin  
 3 spoke with Mr. Pritchard.<sup>10</sup> Mr. Morin testified that Mr. Pritchard told him the following:

- 4 • Mr. Pritchard is not related to Ms. Wagner.<sup>11</sup>
- 5 • Mr. Pritchard met Ms. Wagner as a friend of his stepdaughter.<sup>12</sup>  
 6 Over time, Mr. Pritchard kept in contact with Ms. Wagner and  
 7 he became a client of hers.<sup>13</sup>
- 8 • Mr. Pritchard loaned Ms. Wagner \$400,000 for the purpose of  
 9 buying an office condominium.<sup>14</sup> The \$400,000 came from Mr.  
 10 Pritchard's investment accounts that were managed by Ms.  
 11 Wagner.<sup>15</sup> Mr. Pritchard received documentation of the loan.<sup>16</sup>
- 12 • Mr. Pritchard is a retired physician.<sup>17</sup> He was not in the  
 13 business of making loans or investing in real property, though  
 14 he owned a vacation home.<sup>18</sup>

15 Michelle Lee Wagner

16 Ms. Wagner testified that she is a certified financial planner residing in Arizona.<sup>19</sup> Ms.  
 17 Wagner has worked as a registered securities salesperson since 1995.<sup>20</sup> Ms. Wagner testified that she  
 18 is self-employed and that Crown Capital has been her broker since 2003.<sup>21</sup> Ms. Wagner is also a  
 19 lieutenant colonel in the Air Force Reserves.<sup>22</sup> Ms. Wagner testified that she has been in the Air  
 20

21 \_\_\_\_\_  
 22 <sup>8</sup> *Id.* at 22.

<sup>9</sup> *Id.* at 23.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 24.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* Mr. Morin received copies of the loan documents from Mr. Pritchard. Tr. at 24-25; Exhs. S-7-S-11.

<sup>17</sup> Tr. at 25.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 29.

<sup>20</sup> *Id.* at 30.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 31.

1 Force since 1987 and that she has been “selected for colonel.”<sup>23</sup>

2 Ms. Wagner testified that she met Mr. Pritchard through a college friend of hers.<sup>24</sup> Ms.  
3 Wagner became a close friend of Mr. Pritchard and his family.<sup>25</sup> Ms. Wagner testified that when she  
4 was in town for monthly military duty she would spend weekends with Mr. Pritchard and his then  
5 wife, and that she had dinner with him weekly once she moved back to Arizona.<sup>26</sup> Ms. Wagner  
6 testified that in late 2003, Mr. Pritchard asked if she would take him as a client after his business had  
7 been turned away elsewhere due to excessive trading on his accounts.<sup>27</sup> Ms. Wagner believed that  
8 she had taken over some, but not all, of Mr. Pritchard’s accounts.<sup>28</sup>

9 Ms. Wagner testified that she rented her office space but had inquired with two banks about  
10 obtaining a small business loan to purchase office space.<sup>29</sup> Without asking Mr. Pritchard for a loan,  
11 Ms. Wagner learned that he wanted to provide a loan to her from his charitable remainder trust  
12 (“CRT”).<sup>30</sup> Ms. Wagner testified that such a loan was in the interest of Mr. Pritchard as he needed to  
13 reposition his assets to generate the five percent annual income stream required for his CRT.<sup>31</sup> Ms.  
14 Wagner accepted the loan because she felt Mr. Pritchard was “practically family” and that she would  
15 be responsible in making payments, thereby meeting Mr. Pritchard’s need of an income stream for  
16 the CRT.<sup>32</sup> At the time of the loan, the Pritchard CRT was Ms. Wagner’s client.<sup>33</sup> Ms. Wagner  
17 testified that she did not consider whether it was ethical to accept the loan from Mr. Pritchard and she  
18 did not disclose that providing him income on his investment was a conflict of interest.<sup>34</sup>

19 Ms. Wagner testified that she used the \$400,000 loan to purchase office space and make  
20 “tenant improvements” for the office suite.<sup>35</sup> Ms. Wagner did not personally receive any of the  
21

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22 <sup>23</sup> *Id.*

23 <sup>24</sup> *Id.* at 31-32.

24 <sup>25</sup> *Id.* at 32.

25 <sup>26</sup> *Id.*

26 <sup>27</sup> *Id.* at 32-33.

27 <sup>28</sup> *Id.* at 33-34.

28 <sup>29</sup> *Id.* at 34-35.

29 <sup>30</sup> *Id.* at 35.

30 <sup>31</sup> *Id.* at 36.

31 <sup>32</sup> *Id.*

32 <sup>33</sup> *Id.* at 54.

33 <sup>34</sup> *Id.* at 37, 55.

34 <sup>35</sup> *Id.* at 37, 57.

1 money from the loan.<sup>36</sup> Ms. Wagner testified that she believed the loan was secured by the actual  
 2 property through the promissory note and the deed of trust.<sup>37</sup> Ms. Wagner testified that her business  
 3 partner drafted the promissory note and deed of trust, and that she believed they were dated May  
 4 2005.<sup>38</sup> The property was titled in Ms. Wagner's name and she used it as her primary office.<sup>39</sup> Ms.  
 5 Wagner met with Mr. Pritchard at the office and conducted business with him there.<sup>40</sup>

6 Ms. Wagner testified that the promissory note called for interest payments to be made with  
 7 the principal due at the end of the term.<sup>41</sup> Ms. Wagner paid interest on the note with income she  
 8 made as a registered representative and as an Air Force reservist.<sup>42</sup> Ms. Wagner made all of the  
 9 payments on the original 2005 promissory note.<sup>43</sup> Ms. Wagner testified that the original promissory  
 10 note was revised in 2008 to extend it an additional two years, increase the interest rate, and postpone  
 11 the payment of the full amount of the principal to the end of the period.<sup>44</sup> Ms. Wagner made  
 12 payments according to the terms of the 2008 note.<sup>45</sup> Ms. Wagner estimated the highest value of the  
 13 office condo, between 2005 and 2010, was approximately \$427,000 or \$430,000.<sup>46</sup> However, Ms.  
 14 Wagner testified that the value of the condo dropped due to the economy and through no fault of her  
 15 own.<sup>47</sup>

16 Ms. Wagner testified that an extension of the note was done in 2011 and a new note was  
 17 agreed to run through December 31, 2012.<sup>48</sup> Ms. Wagner testified that Mr. Pritchard drafted this last  
 18 note.<sup>49</sup>

19 Ms. Wagner testified that Mr. Pritchard called the note due on December 31, 2012, at the end  
 20 of the last note.<sup>50</sup> Ms. Wagner was unable to obtain other financing for the property as its value had

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21 <sup>36</sup> *Id.* at 37.

22 <sup>37</sup> *Id.* at 38.

23 <sup>38</sup> *Id.*

24 <sup>39</sup> *Id.* at 38-39.

25 <sup>40</sup> *Id.* at 39.

26 <sup>41</sup> *Id.* at 39-40.

27 <sup>42</sup> *Id.* at 55.

28 <sup>43</sup> *Id.* at 40.

<sup>44</sup> *Id.* at 40-41.

<sup>45</sup> *Id.* at 41.

<sup>46</sup> *Id.* at 42.

<sup>47</sup> *Id.* at 41-42.

<sup>48</sup> *Id.* at 44.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 43.

1 decreased below that of the note.<sup>51</sup> Ms. Wagner testified that she did not attempt to obtain a further  
 2 extension from Mr. Pritchard as she had experienced “volatility” from Mr. Pritchard and her business  
 3 partner had a falling out with him.<sup>52</sup> In July 2012, Ms. Wagner and Mr. Pritchard mutually agreed  
 4 that he should obtain a new registered representative.<sup>53</sup>

5 Ms. Wagner testified that when Mr. Pritchard called the note, she could not have obtained  
 6 financing for a \$400,000 mortgage because the property value had dropped to approximately  
 7 \$230,000.<sup>54</sup> Mr. Pritchard took possession of the property after it sold for \$152,000 at a trustee  
 8 sale.<sup>55</sup> Ms. Wagner testified that she believed Mr. Pritchard subsequently sold the property for  
 9 \$180,000, having made a loan to the new owners from whom Mr. Pritchard currently receives  
 10 payments.<sup>56</sup> Ms. Wagner further testified that Mr. Pritchard filed a lawsuit against her for the  
 11 difference in value between the \$400,000 promissory note and the \$152,000 from the trustee sale.<sup>57</sup>  
 12 Ms. Wagner testified that the Superior Court matter has been stayed as a result of her filing for  
 13 bankruptcy.<sup>58</sup> Ms. Wagner further testified that her debt to Mr. Pritchard was discharged in her  
 14 bankruptcy petition, though he had filed for an exception which remains unresolved.<sup>59</sup> Ms. Wagner  
 15 further testified that as part of the bankruptcy proceeding, her residential parking space was  
 16 liquidated and commissions and fees from her license were being pursued.<sup>60</sup> Ms. Wagner testified  
 17 that, as a creditor, Mr. Pritchard could file a claim against the bankruptcy estate which would make  
 18 him eligible for distribution of monies from the bankruptcy estate.<sup>61</sup>

### 19 **III. Legal Argument**

#### 20 **A. The Violation**

21 The Division contends that the Respondent engaged in unethical and dishonest practice in the  
 22

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23 <sup>51</sup> *Id.* at 42-43.

24 <sup>52</sup> *Id.* at 43-45.

25 <sup>53</sup> *Id.*

26 <sup>54</sup> *Id.* at 46.

27 <sup>55</sup> *Id.*

28 <sup>56</sup> Tr. at 47-48; Exh. R-12.

<sup>57</sup> Tr. at 48.

<sup>58</sup> *Id.* at 49-50.

<sup>59</sup> *Id.* at 51.

<sup>60</sup> *Id.* at 52-53.

<sup>61</sup> *Id.* at 53.

1 securities industry in violation of A.R.S. § 44-1962(A)(10)<sup>62</sup> and A.A.C. R14-4-130(A)(15).<sup>63</sup> The  
 2 Division asserts that the elements of the offense have been established by stipulated facts and the  
 3 evidence of record:

- 4 • Ms. Wagner was a registered salesman residing and operating in Arizona for all relevant  
 5 times.<sup>64</sup>
- 6 • Mr. Pritchard and the CRT were customers of Ms. Wagner.<sup>65</sup>
- 7 • Mr. Pritchard and the CRT loaned Ms. Wagner \$400,000 to purchase an office condominium  
 8 and make tenant improvements.<sup>66</sup>
- 9 • Mr. Pritchard is not a relative of Ms. Wagner's and neither he nor the CRT was in the  
 10 business of lending funds.<sup>67</sup>

11 The parties have stipulated to facts comprising the elements of the violation alleged by the  
 12 Division. The Respondent "acknowledges and admits that she obtained a personal loan secured by a  
 13 Deed of Trust from a non-relative not in the business of making loans."<sup>68</sup> Accordingly, we find that  
 14 the Respondent violated A.R.S. § 44-1962(A)(10) and A.A.C. R14-4-130(A)(15).

15  
 16 \_\_\_\_\_  
 16 <sup>62</sup> A.R.S. § 44-1962 provides, in pertinent part:

17 A. After a hearing or notice and opportunity for a hearing as provided by article 11 of this chapter, the commission may  
 18 enter an order suspending for a period of not to exceed one year, denying or revoking the registration of a salesman if the  
 19 commission finds that:

18 \* \* \*  
 19 10. The salesman has engaged in dishonest or unethical practices in the securities industry.  
 19 \* \* \*

20 B. In addition to denying, revoking or suspending the registration, if the commission finds that a salesman has engaged in  
 21 an act, practice or transaction described in subsection A, paragraph 10 or 11, the commission may do one or more of the  
 22 following:

- 21 1. Assess administrative penalties.
- 22 2. Order the salesman to cease and desist from engaging in the act, practice or transaction or doing any other act in  
 23 furtherance of the act, practice or transaction.
- 24 3. Take appropriate affirmative action, as prescribed by the commission, to correct the conditions resulting from the act,  
 25 practice or transaction, including a requirement to provide restitution.

<sup>63</sup> A.A.C. R14-4-130 provides, in pertinent part:

24 A. For purposes of A.R.S. §§ 44-1961(A)(13) and 44-1962(10), dishonest or unethical practices in the securities industry  
 shall include but not be limited to the following:

25 \* \* \*  
 26 15. Borrowing of money or securities by a salesman from a customer, except when the customer is a relative of the  
 27 salesman or a person in the business of lending funds.

<sup>64</sup> Joint Fact Stipulations at ¶ 1; Tr. at 13-14, 20; Exhs. S-1, S-2, S-5 at 11.

<sup>65</sup> Joint Fact Stipulations at ¶¶ 3-5; Tr. at 15, 23, 32-34, 54; Exh. S-5 at 23-24.

<sup>66</sup> Joint Fact Stipulations at ¶¶ 9, 11; Tr. at 24, 37, 57; Exhs. R-3, R-7, S-5 at 33-36, S-7.

<sup>67</sup> Joint Fact Stipulations at ¶¶ 8, 10; Tr. at 23, 25.

28 <sup>68</sup> Respondent's Post-Hearing Brief at 5.

1           B. Remedies

2           Having determined that the Respondent committed dishonest or unethical practices in the  
3 securities industry, the Commission, pursuant to A.R.S. § 44-1962, may order the suspension or  
4 revocation of the Respondent's securities salesman's registration, assess administrative penalties,  
5 order the Respondent to cease and desist from committing further violations of the Act, and/or take  
6 affirmative action to correct conditions resulting from the act, such as ordering restitution.

7                   1. Effect of the Respondent's Bankruptcy

8           Before determining what action would be appropriate in light of the Respondent's violation,  
9 we first consider whether the Respondent's bankruptcy proceeding would restrict the options  
10 otherwise available to the Commission under A.R.S. § 44-1962.

11           The Division contends that the Commission's proceedings are not affected by Ms. Wagner's  
12 bankruptcy and that a Commission order would not be dischargeable in bankruptcy. The Division  
13 notes that the bankruptcy code's automatic stay generally excludes proceedings by a governmental  
14 unit to enforce its police and regulatory power.<sup>69</sup> The Division further cites *In re Knoell*, wherein the  
15 Arizona District Court specifically found an exemption to the automatic stay applied to the  
16 Commission's investigation of possible violations of the Arizona Securities Act, an action pursuant to  
17 the Commission's police and regulatory power.<sup>70</sup> The Division also relies upon a United States  
18 Bankruptcy Court Order that acknowledged the Commission's ability to proceed in the exercise of its  
19 regulatory powers against a Respondent who had filed a bankruptcy petition.<sup>71</sup> As stated in the  
20 Bankruptcy Court Order, "the Court recognizes the authority of the Arizona Corporation Commission  
21 to enter Orders in administrative and civil proceedings, including but not limited to, those that  
22 provide for injunctive relief, for penalties, for restitution and for the revocation of licenses as  
23 provided by law; however the Arizona Corporation Commission may not attempt to execute upon  
24 any monetary judgment so long as the Bankruptcy Court has jurisdiction over the debtor."<sup>72</sup>

25           The Division further contends that debts arising from administrative orders are non-

26 <sup>69</sup> 11 U.S.C.A. § 362(b)(4).

27 <sup>70</sup> *In re Knoell*, 160 B.R. 825, 826 (D. Ariz. 1993).

28 <sup>71</sup> "Notice of Ruling by the Honorable Randolph J. Haines, United States Bankruptcy Court," filed February 13, 2006, In the Matter of Arthur B. Cooper, Docket No. S-03550A-04-0000.

<sup>72</sup> *Id.*

1 dischargeable under the bankruptcy code.<sup>73</sup> The Division cites a decision of the Georgia Bankruptcy  
 2 Court which noted that "Section 523(a)(19) expressly contemplates a postpetition determination of  
 3 liability by a nonbankruptcy forum for debts resulting from securities law violations as well as  
 4 common law fraud, deceit, or manipulation in connection with the purchase or sale of a security."<sup>74</sup>  
 5 The Division contends that once the Commission issues an order, collection on that order can be  
 6 determined by the bankruptcy court.

7 The Respondent acknowledges that the automatic stay of 11 U.S.C. § 362 does not apply to  
 8 bar the Commission's proceeding. However, the Respondent contends that restitution should not be  
 9 awarded because any debt she owed to Mr. Pritchard has already been discharged by the bankruptcy  
 10 court. The Respondent notes that Mr. Pritchard filed an Adversary Proceeding seeking to have his  
 11 claim against her excepted from the bankruptcy Discharge Order. The Respondent argues that it is  
 12 within the exclusive province of the Bankruptcy Court to determine if the debt should be excepted  
 13 from discharge. Until that time, the Respondent contends that no debt exists upon which restitution  
 14 may be ordered.

15 The Respondent notes that while the Bankruptcy Court in *Zimmerman* found it appropriate for  
 16 a non-bankruptcy forum to determine liability for violations pertaining to securities laws, the  
 17 determination of dischargeability lies exclusively with the bankruptcy court as a core proceeding.  
 18 The Respondent further disagrees with the Division's contention that a Commission order for  
 19 restitution would be non-dischargeable, arguing that the Congressional intent behind 11 U.S.C.A. §  
 20

21 <sup>73</sup> 11 U.S.C.A. § 523 provides, in pertinent part:

22 (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor  
 from any debt--

\* \* \*

23 (19) that--

(A) is for--

24 (i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange  
 Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities  
 25 laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

26 (B) results, before, on, or after the date on which the petition was filed, from--

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

27 (ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement  
 28 payment, attorney fee, cost, or other payment owed by the debtor.

<sup>74</sup> *In re Zimmerman*, 341 B.R. 77, 80 (Bankr. N.D. Ga. 2006).

1 523(a)(19) was to allow for recovery by defrauded investors, whereas the Respondent here did not  
2 engage in fraudulent conduct.

3 The Commission's ability to exercise its police and regulatory power is not stayed by a  
4 respondent's bankruptcy petition. Under A.R.S. § 44-1962, the Commission's authority includes the  
5 ability to order that restitution be paid by a securities salesman found to have engaged in dishonest or  
6 unethical practices in business or financial matters. Accordingly, we find that a respondent's  
7 discharge of a debt in a bankruptcy proceeding does not act to preclude the Commission from  
8 ordering restitution if otherwise appropriate.

9 We note that this conclusion is not in discord with the Respondent's contention that the  
10 question of dischargeability of a debt is a matter for the bankruptcy court. By ordering restitution, the  
11 Commission exercises only that authority granted to it by statute, and we express no opinion  
12 regarding the issue of dischargeability. As noted by the Division, collection matters are beyond the  
13 scope of this administrative proceeding.

## 14 2. Application of Remedies

15 The Division recommends that the Commission revoke the Respondent's securities  
16 salesman's registration. The Division cites four prior cases, asserted as being similar to the present  
17 case, wherein revocation was ordered by the Commission: In the Matter of Anthony Ray Stacy  
18 (Docket No. S-20909A-14-0226, Decision No. 74849 (December 18, 2014)), In the Matter of Brit M.  
19 Lachemann (Docket No. S-20894A-13-0351, Decision No. 74239 (January 7, 2014)), In the Matter  
20 of Lynn R. Goldney (Docket No. S-20880A-13-0088, Decision No. 73866 (May 8, 2013)), and In the  
21 Matter of Attila G. Toth (Docket No. S-20782A-11-0019, Decision No. 72507 (August 3, 2011)).

22 The Division further recommends that the Respondent be ordered to pay restitution in the  
23 amount of \$400,000 less distributions already received by Mr. Pritchard.<sup>75</sup> The Division seeks an

24 <sup>75</sup> A.A.C. R14-4-308(C) provides, in pertinent part:

25 C. If restitution is ordered by the Commission,

26 1. The amount payable as damages to each purchaser shall include:

27 a. Cash equal to the fair market value of the consideration paid, determined as of the date such payment was originally  
28 paid by the buyer, together with

b. Interest at a rate pursuant to A.R.S. § 44-1201 for the period from the date of the purchase payment to the date of  
repayment; less

c. The amount of any principal, interest, or other distributions received on the security for the period from the date of  
purchase payment to the date of repayment.

1 offset of the restitution amount for the interest payments made by Ms. Wagner.<sup>76</sup> The Division also  
2 recommends an additional offset of \$180,000 for the sale of the property by Mr. Pritchard.

3 The Respondent requests that the Commission enter a cease and desist order, but refrain from  
4 ordering the revocation or suspension of her registration, or the imposition of an administrative  
5 penalty. The Respondent argues that the prior Commission cases cited by the Division are factually  
6 different from the present matter. The Respondent argues that mitigating factors include the lack of  
7 fraudulent conduct on her part and the length of time since the conduct occurred. Without citing to  
8 the record, the Respondent asserts numerous facts supporting mitigation of any penalties ordered by  
9 the Commission. Specifically, the Respondent sets forth twenty factors she believes favor leniency  
10 by the Commission:

- 11 1. Though not related to Mr. Pritchard, she had a very close relationship with him and his  
12 family.
- 13 2. Mr. Pritchard's investment goals included obtaining investments that would produce a  
14 stream of income.
- 15 3. Without solicitation from the Respondent, Mr. Pritchard offered to make the loan to the  
16 Respondent as an investment benefiting his CRT.
- 17 4. The loan was consistent with Mr. Pritchard's investment goals and the Respondent  
18 believed the loan was in his best interest.
- 19 5. At the time of the loan, the Respondent was unaware that the loan violated A.R.S. § 44-  
20 1962 and A.A.C. R14-4-130(A)(15).
- 21 6. The Respondent received no money or personal benefit from the loan as all funds were  
22 used for the purchase and improvements of the office condo that would be her primary  
23 place of business.
- 24 7. Though the Respondent made all payments on the loan for over seven years, Mr. Pritchard  
25 refused to extend the loan due date in December 2012.
- 26 8. On December 31, 2012, Mr. Pritchard demanded Wagner pay the principal balance of

27 <sup>76</sup> The Division asserts that the Respondent paid \$123,333.24. Division Post-Hearing Brief at 6, 10. However, the  
28 evidence of record shows the Respondent paid a total of \$121,333.24. Exh. R-13. We adopt that amount supported by  
the record.

1           \$400,000.

2           9. The Respondent attempted to refinance the loan or obtain a new loan on the office condo  
3           but she was unable to do so as a result of the loss in property value from the collapse of  
4           the real estate market at the time Mr. Pritchard called the note due.

5           10. The Respondent was not responsible for the property's loss of market value.

6           11. Four months after foreclosing on the property, Mr. Pritchard resold it for \$180,000.

7           12. Mr. Pritchard loaned the purchase price of the condo to the subsequent buyers of the  
8           office condo through a "seller carryback" agreement.

9           13. Mr. Pritchard continues to receive monthly payments from the resale of the office condo.

10          14. The Respondent did not intend for Mr. Pritchard to suffer harm.

11          15. Mr. Pritchard's return on his investment cannot be calculated because he continues to  
12          receive income therefrom.

13          16. On June 26, 2013, Mr. Pritchard commenced litigation against the Respondent in Superior  
14          Court for breach of contract pursuant to A.R.S. § 33-814.

15          17. The Respondent "was unable to financially support an aggressive defense to Pritchard's  
16          Superior Court proceeding or to pay the deficiency claim," and filed for bankruptcy  
17          protection.

18          18. As a result of her bankruptcy filing, Ms. Wagner was discharged of her debts, including  
19          any debt to Mr. Pritchard, on February 27, 2014.

20          19. Mr. Pritchard has filed a request in the bankruptcy proceeding to declare any debt owed  
21          him by the Respondent as being non-dischargeable. As of the briefing in this matter, no  
22          decision had been rendered on the request.

23          20. In seventeen years of being a registered securities salesman in Arizona, the Respondent  
24          has not committed any other violation.

25          The Respondent further argues against an order of restitution. The Respondent notes that  
26          restitution is discretionary, not mandatory.<sup>77</sup> The Respondent urges the Commission to consider the

27          <sup>77</sup> A.A.C. R14-4-308 provides, in pertinent part:

28          A. When a person or persons have violated the Securities Act or the IM Act, or any rule or order of the Commission, the Commission may require the person or persons to make rescission and/or restitution as provided herein.

1 Sanction Guidelines of the Financial Industry Regulatory Authority (“FINRA”). When considering  
2 the FINRA recommendations, the Respondent argues that mitigating factors include: the remoteness  
3 in time of her actions, the absence of any ill-gotten gain, the isolated nature of the incident, the level  
4 of sophistication of the investor, the Respondent’s acceptance of responsibility for her actions, and  
5 the Respondent’s financial inability to pay fines and restitution. The Respondent contends that  
6 restitution is not appropriate because Mr. Pritchard entered into an “arms-length” business transaction  
7 and that Ms. Wagner was not responsible for the calling due of the note at a time when she could not  
8 realistically refinance the property due to the collapse in real estate values at the time. The  
9 Respondent further argues that restitution is inappropriate because, since the hearing, Mr. Pritchard  
10 has served a demand for arbitration against Ms. Wagner’s broker seeking money damages for her  
11 alleged improper conduct, which could result in Mr. Pritchard receiving a windfall.

12 In its Reply Brief, the Division responds to many of the Respondent’s asserted mitigating  
13 factors. The Division argues that the contract and bankruptcy litigation activities of the Respondent  
14 and Mr. Pritchard are irrelevant as the Respondent’s violation of the Securities Act creates a separate  
15 debt independent of those disputes. The Division also minimizes the close relationship between Mr.  
16 Pritchard and the Respondent as it does not meet the exemption set forth in A.A.C. R14-4-130(A)(15)  
17 for relatives. The Division further disputes the Respondent’s characterization of Mr. Pritchard’s  
18 having made similar loans when the evidence shows only that he later received a promissory note as  
19 partial payment for his sale of the foreclosed office condo, a situation different from the actual loan  
20 made to the Respondent. The Division contends that because the Legislature has instructed that the  
21 Securities Act “be liberally construed to effect its remedial purpose of protecting the public  
22 interest,”<sup>78</sup> the FINRA guidelines should not be adopted by the Commission as they might limit this  
23 purpose. The Division also argues that future income received by Mr. Pritchard, from the sale of the  
24 property or from court orders against the Respondent, could be offset in collections rather than bar an  
25 order of restitution at this time.

26 We consider the four cases previously before the Commission cited by the Division for their  
27

28 <sup>78</sup> *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 410, 79 P.3d 86, 97 (App. 2003) citing 1951 Ariz. Sess. Laws, ch. 18, § 20.

1 similarity to this matter. We note that the Respondent in all four of these cases consented to the entry  
 2 of the order. We also consider a fifth case, not cited by the parties, wherein the Commission issued  
 3 an Opinion and Order following a hearing.

4 In the Matter of Anthony Ray Stacy

5 Mr. Stacy was licensed with the Commission as an investment advisor representative.<sup>79</sup>  
 6 Pursuant to the terms of a promissory note, Mr. Stacy borrowed \$130,000 from a client and promised  
 7 to repay that amount in approximately three months with interest in the amount of \$9,100.<sup>80</sup> Mr.  
 8 Stacy informed his client that the funds would be used to fund Mr. Stacy's personal investment in a  
 9 restaurant.<sup>81</sup> Instead, Mr. Stacy used the funds to pay personal obligations and expenses.<sup>82</sup> Mr. Stacy  
 10 failed to repay the loan as of the date of the Commission's decision.<sup>83</sup> Mr. Stacy was found to have  
 11 engaged in dishonest or unethical practices in the securities industry by borrowing money from a  
 12 client who, at the time of the loan, was neither a relative of Mr. Stacy, nor a dealer or affiliate of Mr.  
 13 Stacy, nor a financial institution or other entity engaged in the business of loaning funds or securities,  
 14 thereby violating A.R.S. § 44-3201(A)(13) and A.A.C. R14-6-203(6).<sup>84</sup> Pursuant to the terms of the  
 15 consent order, Mr. Stacy's license as an investment advisor representative was permanently revoked,  
 16 Mr. Stacy and his marital community were ordered to pay restitution in the principal amount of  
 17 \$130,000.00, and Mr. Stacy and his marital community were ordered to pay an administrative penalty  
 18 in the amount of \$1,000.<sup>85</sup>

19 In the Matter of Britt M. Lachemann

20 Mr. Lachemann was registered as a securities salesman in Arizona.<sup>86</sup> Mr. Lachemann  
 21 obtained three distinct loans from non-related customers totaling \$217,500.00.<sup>87</sup> Mr. Lachemann  
 22 made partial repayment of the loans, but he still owed \$24,500.00 at the time of the Commission's  
 23

24 <sup>79</sup> Decision No. 74849 at 2.

25 <sup>80</sup> *Id.*

26 <sup>81</sup> *Id.*

27 <sup>82</sup> *Id.* at 3.

28 <sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 4.

<sup>85</sup> *Id.* at 5.

<sup>86</sup> Decision No. 74239 at 1.

<sup>87</sup> *Id.* at 2.

1 decision.<sup>88</sup> Mr. Lachemann was found to have engaged in dishonest or unethical practices in the  
 2 securities industry by borrowing money from his customers who, at the time of the loans, were  
 3 neither relatives of Mr. Lachemann, nor persons in the business of loaning funds or securities,  
 4 thereby violating A.A.C. R14-4-130(A)(15). Pursuant to the terms of the consent order, Mr.  
 5 Lachemann's registration as a securities salesman was revoked, Mr. Lachemann was ordered to pay  
 6 restitution in the principal amount of \$24,500.00, and Mr. Lachemann was ordered to pay an  
 7 administrative penalty in the amount of \$10,000.<sup>89</sup>

8 In the Matter of Lynn R. Goldney

9 Mr. Goldney was registered as a securities salesman in Arizona.<sup>90</sup> Mr. Goldney obtained 45  
 10 distinct loans from 26 of his customers totaling \$255,175.<sup>91</sup> At the time of the decision, Mr. Goldney  
 11 had repaid \$163,705 in principal and interest while still owing \$98,835 of principal.<sup>92</sup> Mr. Goldney  
 12 was found to have engaged in dishonest or unethical practices in the securities industry by borrowing  
 13 money from his customers who, at the time of the loans, were neither relatives of Mr. Goldney, nor  
 14 persons in the business of loaning funds or securities.<sup>93</sup> Pursuant to the terms of the consent order,  
 15 Mr. Goldney's registration as a securities salesman was revoked, Mr. Goldney and his marital  
 16 community were ordered to pay restitution in the principal amount of \$98,835.00, and Mr. Goldney  
 17 and his marital community was ordered to pay an administrative penalty in the amount of \$10,000.<sup>94</sup>

18 In the Matter of Attila G. Toth

19 Mr. Toth was registered as a securities salesman in Arizona.<sup>95</sup> Mr. Toth set up a self-directed  
 20 IRA and a 403(b) money fund for a client.<sup>96</sup> Months later, Mr. Toth solicited a short-term loan to a  
 21 company unrelated to Mr. Toth from the client in the amount of \$70,000 from the client's 403(b)  
 22 account.<sup>97</sup> The client agreed to a distribution of \$70,000 which resulted in the liquidation of shares of  
 23

24 <sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 3.

<sup>90</sup> Decision No. 73866 at 2.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 3-4.

<sup>95</sup> Decision No. 72507 at 2.

<sup>96</sup> *Id.* at 3.

<sup>97</sup> *Id.*

1 the client's money market funds from which \$17,500 was withheld in federal and state taxes and the  
 2 remaining \$52,500 was wired by the client to an account designated by Mr. Toth.<sup>98</sup> Mr. Toth  
 3 transferred the \$52,500 into his personal bank account and used the monies for his personal  
 4 expenses.<sup>99</sup> Mr. Toth was found to have violated A.R.S. § 44-1991 by (a) employing a device,  
 5 scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material  
 6 facts, of (c) engaging in transactions, practices, or courses of business that operate or would operate  
 7 as fraud or deceit.<sup>100</sup> Pursuant to the terms of the consent order, Mr. Toth's registration as a securities  
 8 salesman was revoked, Mr. Toth and his marital community were ordered to pay restitution in the  
 9 principal amount of \$70,000.00, and Mr. Toth and his marital community was ordered to pay an  
 10 administrative penalty in the amount of \$10,000.<sup>101</sup>

11 In the Matter of James T. M. Verbic<sup>102</sup>

12 Mr. Verbic was a registered securities salesman in Arizona.<sup>103</sup> The Division alleged that Mr.  
 13 Verbic received three loans from a customer who was neither a relative of Mr. Verbic nor a person in  
 14 the business of lending funds, in violation of A.R.S. § 44-1962(A)(10) and A.A.C. R14-4-130(A).<sup>104</sup>  
 15 The Commission found that Mr. Verbic committed two violations of the Act: one violation from Mr.  
 16 Verbic borrowing money from his client, and another violation where the loan did not actually occur  
 17 but Mr. Verbic's intent and actions in furtherance of borrowing money from his client constituted  
 18 unethical conduct.<sup>105</sup> The Commission weighed the aggravating and mitigating factors in the case  
 19 and ordered a sixty day suspension of Mr. Verbic's registration as a securities salesman and an  
 20 administrative penalty in the amount of \$2,000.<sup>106</sup> The Commission did not order restitution as the  
 21 customer had received payment of his principal and interest and there was no allegation that the  
 22 customer was injured financially as a result of Mr. Verbic's actions.<sup>107</sup>

23 <sup>98</sup> *Id.*

24 <sup>99</sup> *Id.* at 3-4.

<sup>100</sup> *Id.* at 5.

25 <sup>101</sup> *Id.* at 6-7.

<sup>102</sup> Docket No. S-03435A-01-0000, Decision No. 66649 (December 22, 2003).

26 <sup>103</sup> Decision No. 66649 at 2.

<sup>104</sup> *Id.* at 2-3.

<sup>105</sup> *Id.* at 7.

27 <sup>106</sup> *Id.* at 8-9. Mr. Verbic had been unregistered for three years at the time and had argued that there was no need to  
 suspend a license that had previously lapsed. *Id.* at 7-8.

28 <sup>107</sup> *Id.* at 8.

1                   3. Conclusion

2           As previously noted, all four of the cases cited by the Division involved consent orders, unlike  
3 the current contested matter. In all four cases, the respondent was ordered to pay restitution and his  
4 license or registration was revoked. All four of these cases also contain aggravating factors or a  
5 series of violations that are not present in this case. Unlike Ms. Wagner, Mr. Stacy made no  
6 payments on the loan and he used his client's funds for personal expenses after having told the client  
7 the loan would be used for his investment in a restaurant. Ms. Wagner obtained only one loan while  
8 Mr. Lachemann received three loans from three customers and Mr. Goldney obtained 45 loans from  
9 26 customers. Mr. Toth was found to have defrauded his client while no allegation of fraud has been  
10 made against Ms. Wagner. In the lone contested case, Mr. Verbic was not ordered to pay restitution  
11 as his customer had already received payment. Rather than revoking Mr. Verbic's registration, the  
12 Commission ordered a sixty day suspension. In that case, the Commission found two violations of  
13 the Act, whereas Ms. Wagner has committed only one.

14           Pursuant to A.R.S. § 44-1962, the Commission has discretion to impose a suspension of up to  
15 one year or to revoke the registration of a securities salesman who has engaged in dishonest or  
16 unethical practices in the securities industry. The Commission also has discretion to assess  
17 administrative penalties or order the payment of restitution. We are unaware of, and the parties do  
18 not cite, any statute or rule setting forth factors for the Commission to consider in determining the  
19 appropriateness of any specific remedy available to the Commission. The Respondent urges the  
20 Commission to apply FINRA Sanction Guidelines. While we decline to adopt any standards  
21 promulgated outside of Arizona law, our legislatively granted discretion permits us to consider the  
22 totality of the circumstances in rendering a decision. We find that harsher remedies imposed in past  
23 Commission orders are not necessary to protect the public interest in this case for the following  
24 reasons: the Respondent has committed only one violation, in 2005, while having been registered as  
25 a securities salesman in Arizona since 1998; no allegation has been made that the Respondent  
26 committed fraud; and the Respondent made ongoing payments to the investor pursuant to the note.  
27 Accordingly, in weighing the aggravating and mitigating factors presented in this case, we conclude  
28 that a thirty day suspension of the Respondent's registration is appropriate.

1 Under A.R.S. § 44-1962, restitution is a mechanism by which the Commission may act to  
2 correct the conditions resulting from the act, practice or transaction which constituted dishonest or  
3 unethical practices in the securities industry. Contrary to the assertion of the Respondent, her loan  
4 from Mr. Pritchard was not an “arms-length” transaction. One party, the Respondent, had an ethical  
5 obligation requiring her not to enter into the transaction. We find it appropriate, pursuant to A.R.S. §  
6 44-1962, to correct the conditions of the Respondent’s action by ordering restitution in the amount of  
7 \$98,666.76 (the \$400,000 loaned to the Respondent less \$121,333.24 already paid by the Respondent  
8 and the \$180,000 recovered by the sale of the property). We further assess an administrative penalty  
9 of \$1,000.

10 \* \* \* \* \*

11 Having considered the entire record herein and being fully advised in the premises, the  
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 1. Michelle L. Wagner has been an Arizona resident at all relevant times, i.e. from  
15 November 21, 2003 to the present.<sup>108</sup>

16 2. From 1998 to the present, Ms. Wagner, CRD No. 2403647, has been registered as a  
17 securities salesman in Arizona.<sup>109</sup>

18 3. Beginning in November 2003, Lawrence Pritchard, an Arizona resident, became a  
19 customer of Ms. Wagner’s.<sup>110</sup>

20 4. Mr. Pritchard continued to be Ms. Wagner’s customer through 2012.<sup>111</sup>

21 5. With Mr. Pritchard as her customer, Ms. Wagner managed a portion of his accounts,  
22 his retirement accounts, and accounts and investments of his charitable remainder trust (the  
23 “CRT”).<sup>112</sup>

24 6. These accounts contained, among other assets, mutual funds, stocks and bonds.<sup>113</sup>

25 \_\_\_\_\_  
26 <sup>108</sup> Joint Fact Stipulations at ¶ 1; Notice at ¶ 2; Answer at ¶ 1.

27 <sup>109</sup> Joint Fact Stipulations at ¶ 2; Notice at ¶ 3; Answer at ¶ 1.

28 <sup>110</sup> Joint Fact Stipulations at ¶ 3; Notice at ¶ 4; Answer at ¶ 2.

<sup>111</sup> Joint Fact Stipulations at ¶ 4.

<sup>112</sup> Joint Fact Stipulations at ¶ 5; Notice at ¶ 4; Answer at ¶ 2.

<sup>113</sup> Joint Fact Stipulations at ¶ 6.

1           7.     Mr. Pritchard was the sole trustee of the CRT and acted on its behalf.<sup>114</sup>

2           8.     Mr. Pritchard is not a relative of Ms. Wagner's.<sup>115</sup>

3           9.     In May 2005, Ms. Wagner, dba Creative Consulting, borrowed \$400,000 from the  
4 Trust.<sup>116</sup>

5           10.    At the time, neither Mr. Pritchard nor the CRT is or was in the business of lending  
6 money.<sup>117</sup>

7           11.    The \$400,000 loan was for the purchase and tenant improvements of an office  
8 condominium in Scottsdale.<sup>118</sup>

9           12.    Ms. Wagner purchased the office in May 2005.<sup>119</sup> Title to the office condominium  
10 was in the name of Michelle Wagner.<sup>120</sup> Ms. Wagner caused the tenant improvements to be built in  
11 the office and used it as her place of business until 2013.<sup>121</sup>

12          13.    The loan is evidenced by a Note Secured by Deed of Trust and a Deed of Trust and  
13 Assignment of Rents.<sup>122</sup> Both documents are dated May 16, 2005.<sup>123</sup> Under the terms of the note,  
14 Ms. Wagner was to pay the CRT annual interest of 4%.<sup>124</sup> The office condominium is the collateral  
15 securing Ms. Wagner's obligations under the 2005 note.<sup>125</sup> This deed of trust was not recorded.<sup>126</sup>

16          14.    A second Promissory Note and a second Deed of Trust, both dated June 1, 2008,  
17 replaced the first Promissory Note and first Deed of Trust.<sup>127</sup> Ms. Wagner was solely and personally  
18 liable for repayment of the Promissory Note.<sup>128</sup> Creative Consulting was not a party to the second  
19 Promissory Note and second Deed of Trust.<sup>129</sup> Under the terms of this note, Ms. Wagner would pay  
20

21 <sup>114</sup> Joint Fact Stipulations at ¶ 7; Notice at ¶ 5; Answer at ¶ 3.

22 <sup>115</sup> Joint Fact Stipulations at ¶ 8; Notice at ¶ 6; Answer at ¶ 4.

23 <sup>116</sup> Joint Fact Stipulations at ¶ 9; Notice at ¶ 7; Answer at ¶ 5.

24 <sup>117</sup> Joint Fact Stipulations at ¶ 10.

25 <sup>118</sup> Joint Fact Stipulations at ¶ 11; Notice at ¶ 8; Answer at ¶ 5.

26 <sup>119</sup> Joint Fact Stipulations at ¶ 12; Notice at ¶ 9; Answer at ¶ 6.

27 <sup>120</sup> Joint Fact Stipulations at ¶ 12.

28 <sup>121</sup> Joint Fact Stipulations at ¶ 12; Notice at ¶ 9; Answer at ¶ 6.

<sup>122</sup> Joint Fact Stipulations at ¶ 13; Notice at ¶¶ 10, 12; Answer at ¶ 7.

<sup>123</sup> *Id.*

<sup>124</sup> Joint Fact Stipulations at ¶ 13; Notice at ¶ 10; Answer at ¶ 7.

<sup>125</sup> Joint Fact Stipulations at ¶ 13; Notice at ¶ 12; Answer at ¶ 7.

<sup>126</sup> *Id.*

<sup>127</sup> Joint Fact Stipulations at ¶ 14; Notice at ¶¶ 11, 13; Answer at ¶ 7.

<sup>128</sup> Joint Fact Stipulations at ¶ 14.

<sup>129</sup> Joint Fact Stipulations at ¶ 14.

1 the CRT \$1,500 per month for 24 months.<sup>130</sup> At the end of that period, all unpaid interest and  
 2 principal would be due.<sup>131</sup> This deed of trust also has the office condominium as the collateral  
 3 securing Ms. Wagner's obligations under the 2008 note.<sup>132</sup> This deed of trust was recorded with the  
 4 Maricopa County Recorder at Instrument No. 2008-0529403 on June 1, 2008.<sup>133</sup>

5 15. The parties agreed to a third modification to the notes and deeds of trust on or around  
 6 August 1, 2011.<sup>134</sup> At this time, the CRT and Ms. Wagner personally executed a document titled  
 7 "Extension of Real Estate Note and Deed of Trust Lien."<sup>135</sup> Under this document, Ms. Wagner  
 8 would pay the CRT \$1,500 a month through December 30, 2012.<sup>136</sup>

9 16. Mr. Pritchard did not offer to renew or extend the loan past December 30, 2012.<sup>137</sup>  
 10 The CRT demanded that the entire principal amount, \$400,000, be paid on the due date.<sup>138</sup>

11 17. On April 30, 2013, the CRT conducted a Trustee Sale on the property that was the  
 12 security in the 2008 Deed of Trust.<sup>139</sup> The sale price at the Trustee Sale was \$152,000.<sup>140</sup> Mr.  
 13 Pritchard and the CRT purchased the property at the Trustee Sale.<sup>141</sup> On September 23, 2013, Mr.  
 14 Pritchard and the CRT sold the property for \$180,000.<sup>142</sup>

15 18. Prior to the Trustee Sale, Ms. Wagner paid the CRT interest on the loan pursuant to  
 16 the terms of the notes.<sup>143</sup> Prior to demanding full payment of principal around December 2012, the  
 17 CRT did not request, and Ms. Wagner did not pay the CRT, any principal.<sup>144</sup> Ms. Wagner paid a  
 18 total of \$121,333.24 to the CRT prior to the Trustee Sale.<sup>145</sup>

21 <sup>130</sup> Joint Fact Stipulations at ¶ 14; Notice at ¶ 11; Answer at ¶ 7.

22 <sup>131</sup> *Id.*

23 <sup>132</sup> Joint Fact Stipulations at ¶ 14; Notice at ¶ 13; Answer at ¶ 7.

24 <sup>133</sup> *Id.*

25 <sup>134</sup> Joint Fact Stipulations at ¶ 15; Notice at ¶ 14; Answer at ¶ 7.

26 <sup>135</sup> *Id.*

27 <sup>136</sup> *Id.*

28 <sup>137</sup> Joint Fact Stipulations at ¶ 16; Notice at ¶ 15; Answer at ¶ 7.

<sup>138</sup> *Id.*

<sup>139</sup> Joint Fact Stipulations at ¶ 17; Notice at ¶ 16; Answer at ¶ 7.

<sup>140</sup> *Id.*

<sup>141</sup> Exhs. R-11, R-12.

<sup>142</sup> Tr. at 47; Exh. R-12.

<sup>143</sup> Joint Fact Stipulations at ¶ 18; Notice at ¶ 17; Answer at ¶ 7.

<sup>144</sup> *Id.*

<sup>145</sup> Exh. R-13.



1 effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject  
2 to legal setoffs by the Respondent and confirmed by the Director of Securities.

3 IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an  
4 interest-bearing account(s), if appropriate, until distributions are made.

5 IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the  
6 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate  
7 as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or  
8 any publication that may supersede it on the date that the judgment is entered.

9 IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds to the  
10 investor shown on the records of the Commission. Any restitution funds that the Commission cannot  
11 disburse because the investor refuses to accept such payment or because the investor is deceased and  
12 the Commission cannot reasonably identify and locate the deceased investor's spouse or natural  
13 children surviving at the time of distribution, shall be transferred to the general fund of the State of  
14 Arizona. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall  
15 be transferred to the general fund of the State of Arizona.

16 IT IS FURTHER ORDERED that Respondent Michelle Lee Wagner shall pay to the State of  
17 Arizona an administrative penalty in the amount of \$1,000, pursuant to A.R.S. §§ 44-1962(B) and 44-  
18 2036. Said administrative penalty shall be payable by either cashier's check or money order payable  
19 to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the  
20 general fund for the State of Arizona.

21 IT IS FURTHER ORDERED that the payment obligation for the administrative penalty shall  
22 be subordinate to the restitution obligation ordered herein and shall become immediately due and  
23 payable only after restitution payments have been paid in full or upon Respondent's default with  
24 respect to Respondent's restitution obligation.

25 IT IS FURTHER ORDERED that if Respondent fails to pay the administrative penalty  
26 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*  
27 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the  
28 Board of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that

1 may supersede it on the date that the judgment is entered, may be deemed in default and shall be  
2 immediately due and payable, without further notice.

3 IT IS FURTHER ORDERED that if Respondent fails to comply with this Order, any  
4 outstanding balance shall be in default and shall be immediately due and payable without notice or  
5 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default  
6 by the Commission.

7 IT IS FURTHER ORDERED that default shall render Respondent liable to the Commission  
8 for its cost of collection and interest at the maximum legal rate.

9 IT IS FURTHER ORDERED that if Respondent fails to comply with this Order, the  
10 Commission may bring further legal proceedings against the Respondent including application to the  
11 Superior Court for an order of contempt.

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1 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the  
2 Commission may grant a rehearing of this Order. The application must be received by the  
3 Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise  
4 ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant  
5 a rehearing within twenty (20) calendar days after filing the application, the application is considered  
6 to be denied. No additional notice will be given of such denial.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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10  
11 \_\_\_\_\_ CHAIRMAN \_\_\_\_\_ COMMISSIONER

12  
13 \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

14  
15 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
16 Director of the Arizona Corporation Commission, have  
17 hereunto set my hand and caused the official seal of the  
18 Commission to be affixed at the Capitol, in the City of Phoenix,  
19 this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

20 \_\_\_\_\_  
21 JODI JERICH  
22 EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_

24 DISSENT \_\_\_\_\_  
25 MP:ru

1 SERVICE LIST FOR: MICHELLE LEE WAGNER

2 DOCKET NO.: S-20916A-14-0328

3 J. Murray Ziegler  
4 Zeigler Law Group, PLC  
5 229 W. La Vieve Lane  
6 Tempe, AZ 85284

7 Matthew Neubert, Director  
8 Securities Division  
9 ARIZONA CORPORATION COMMISSION  
10 1300 West Washington Street  
11 Phoenix, AZ 85007

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