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NEW APPLICATION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

2016 JUN 28 P 2:29

COMMISSIONERS

AZ CORP COMMISSION
DOCKET CONTROL

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

In the matter of:
GREGORY ALLEN MCCLAIN,
Respondent.

DOCKET NO. S-20975A-16-0208
**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY
RESPONDENT HAS 20 DAYS TO REQUEST A HEARING
RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent Gregory Allen McClain is engaging in or is about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and A.R.S. § 44-3101, *et seq.*, the Investment Management Act ("IM Act") and that the public welfare requires immediate action.

I.

JURISDICTION

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

II.

RESPONDENT

2. Respondent Gregory Allen McClain ("McClain") is a resident of Cobb County, Georgia.

Arizona Corporation Commission
DOCKETED

JUN 28 2016

DOCKETED BY

1 3. McClain is not registered with the Commission as a securities salesman, securities
2 dealer, investment adviser, or investment adviser representative.

3 4. At all relevant times, McClain was the sole managing member, CEO, treasurer, and
4 secretary of Harmown Investment Group, LLC (“HIG”), a Georgia limited liability company dissolved
5 in 2012.

6 5. At all relevant times, McClain has been the CEO, treasurer, and secretary of Harmown,
7 LLC (“Harmown”), an active Georgia limited liability company.

8 **III.**

9 **FACTS**

10 6. In or around the summer of 2011, McClain and HIG published an advertisement
11 (“Advertisement 1”) on Craigslist.org, an online medium for offering goods and services.

12 7. Advertisement 1 solicited money for investment and guaranteed a return of 10% to
13 30% per month.

14 8. A California resident (“Investor 1”) responded to Advertisement 1.

15 9. During subsequent communications with Investor 1, McClain and HIG guaranteed
16 that they would reimburse Investor 1 for any losses he might sustain.

17 10. Based on McClain’s and HIG’s guarantees, Investor 1 invested \$10,000 with McClain
18 and HIG on August 17, 2011.

19 11. At McClain’s and HIG’s instruction, Investor 1 opened an account with an online
20 brokerage firm and gave McClain and HIG the authority to trade with his investment funds.

21 12. By October 2011, McClain and HIG had lost most of Investor 1’s investment.

22 13. Investor 1 withdrew the remaining \$1,340 on October 11.

23 14. McClain and HIG never reimbursed Investor 1 for the losses he sustained.

24 15. On April 17, 2012, a Georgia resident (“Investor 2”) invested \$10,000 with McClain
25 and HIG after they guaranteed Investor 2 that they would generate profit for him.

1 16. Investor 2 invested by creating and funding an account with an online brokerage firm
2 and giving McClain and HIG authority to trade with his investment funds.

3 17. By June 1, 2012, McClain and HIG had lost most of Investor 2's investment.

4 18. On June 13, 2012, Investor 2 withdrew the remaining \$1,923.17 from his account.

5 19. In July 2014, McClain and Harmown published a new advertisement ("Advertisement
6 2") on Craigslist.

7 20. Advertisement 2 solicited investments of at least \$5,000 and guaranteed a 20% return
8 each month.

9 21. Advertisement 2 also stated that if the account lost money, the investor would be
10 entitled to reimbursement.

11 22. A Nebraska resident ("Investor 3") responded to Advertisement 2.

12 23. Based on McClain's and Harmown's guarantees, Investor 3 invested \$10,000 with
13 McClain and Harmown on August 13, 2014.

14 24. At McClain's and Harmown's instruction, Investor 3 opened an account with an
15 online brokerage firm and gave McClain and Harmown the authority to trade with his investment
16 funds.

17 25. By mid-September 2014, McClain and Harmown had lost most of Investor 3's
18 investment.

19 26. Investor 3 withdrew the remaining \$3,725 from his account on September 11.

20 27. McClain and Harmown never reimbursed Investor 3 for the losses he sustained.

21 28. In July 2014, McClain and Harmown published another advertisement
22 ("Advertisement 3") on Craigslist. Advertisement 3 was published in the Craigslist classifieds
23 directed towards residents of Phoenix, Arizona.

24 29. Advertisement 3 was titled "20% RETURN OR I'LL GIVE YOU \$500!!! (GA)" and
25 solicited investment funds for currency trading.

26

1 30. Advertisement 3 stated “I am a funds manager and am looking for the right people to
2 grow with.”

3 31. Advertisement 3 also represented that “The maximum risk to the account will be 10%,
4 but in an effort to build clientele faster, I am offering new clients the opportunity to invest essentially
5 risk free.”

6 32. Advertisement 3 also stated that, “if at any time your account is negative 10%, I will
7 fully refund that amount.”

8 33. On July 18, 2014, an Arizona resident working undercover for the Division (“UC 1”)
9 responded to Advertisement 3 via email. The email requested additional information regarding the
10 nature of the investment and the ability to withdraw funds.

11 34. On July 19, 2014, McClain responded on behalf of Harmown to the July 18 email
12 from UC 1. McClain’s and Harmown’s response stated that the investment arrangement was “a very
13 unique structure focusing on protecting investment capital”

14 35. The July 19 email to UC 1 also represented that “a \$5k investment would expect to
15 yield a return of \$12k-\$18k in one year (20%-30%)” and that the investment was subject to a 30%
16 incentive fee based on the realized profits for each month.

17 36. The July 19 email to UC 1 also provided UC 1 with instructions as to commencing
18 the investment. According to the email, UC 1 was to set up a managed account with Interactive
19 Brokers “which allows [Respondents] to trade on [UC 1’s] behalf while also trading other accounts
20 under one platform with proportions being divided automatically according to account size.”

21 37. In the July 19, email, Respondents also represented that “the risk structure that I have
22 in place is set up to allow the principle [*sic*] investment to remain intact while 20% - 30% returns are
23 targeted.”

24 38. The July 19 email also reiterated Respondents’ promise to refund any loss at the end
25 of 90 days, and immediately refund any loss of 10%.

26 39. In addition, the July 19 email requested a one-year commitment from UC 1.

1 40. On July 23, UC 1 responded to McClain and Harmown via email. The email
2 expressed UC 1's intent to invest \$5,000 and requesting documentation regarding the investment.

3 41. On July 23, McClain responded to UC 1 on behalf of Harmown via email. The email
4 confirmed that the agreement would be documented and attached the Harmown, LLC Currency
5 Trading Agreement ("the Agreement").

6 42. The Agreement identifies Harmown as the "Manager" and McClain as the "Asset
7 Manager."

8 43. The Agreement authorizes Harmown to use the investor's money to engage in
9 currency trading, and provides that Harmown shall receive a 30% commission on a monthly basis.

10 44. The Agreement provides that "Client authorizes Manager to act on Client's behalf to
11 buy, sell, and trade in the currency market."

12 45. The investment contract offered by McClain and Harmown to UC 1 was not registered
13 with the Commission as a security.

14 46. Neither McClain nor Harmown disclosed to UC 1 that at, as of July 2014, McClain
15 had previously entered into a similar agreement with Investors 1 and 2, and that McClain had lost
16 most of their investment money.

17 47. Neither McClain nor Harmown disclosed to UC 1 that McClain had promised to
18 reimburse Investor 1 for any losses he sustained, but later failed to satisfy this promise.

19 48. Neither McClain nor Harmown inquired as to UC 1's financial circumstances or
20 whether UC 1 was an accredited investor.

21 49. In or around April 1, 2016, McClain published another advertisement on Craigslist
22 ("Advertisement 4").

23 50. Advertisement 4 was published in the Craigslist classifieds directed towards residents
24 of Phoenix, Arizona.

25 51. Advertisement 4 is titled "\$5,000" and states that McClain is "looking for short term
26 arrangements with people who can invest \$5000 or more for 2-4 weeks."

1 52. Advertisement 4 also states that McClain is “focused on raising as much capital as
2 possible.”

3 53. Advertisement 4 further provides that “I will double the amount of your initial
4 investment within that time frame and my fee will be 50% of the realized profits.”

5 54. On April 21, 2016, an Arizona resident working undercover for the Division (“UC
6 2”) called McClain in response to Advertisement 4.

7 55. Over the next few days, McClain and UC2 exchanged voicemails providing contact
8 information to each other.

9 56. On April 26, 2016, McClain sent an email to UC 2 regarding the investment offered
10 in Advertisement 4. According to the email, UC 2 would create an account with an online broker
11 and permit McClain to trade on UC 2’s behalf.

12 57. In the April 26, 2016 email, McClain represented that “My goal will be to double
13 your account in 2 weeks, but it will generally happen within a 2-4 week period.” McClain also stated
14 in the email that, under the arrangement, he would be entitled to 50% of UC 2’s profit at the end of
15 each month.

16 58. UC 2 responded to McClain’s email on April 26, 2016. The email to McClain stated
17 that UC 2 would like to invest but was inexperienced with trading.

18 59. On April 27, 2016, McClain responded UC 2 via email. The email to UC 2 stated
19 that McClain would set up an account for UC 2 with a broker and that UC could transfer the money
20 via PayPal or wire transfer.

21 60. On April 28, 2016, UC 2 responded to McClain via email. The email to McClain
22 stated that UC 2 intended to invest \$10,000 and preferred to tender the investment money via wire
23 transfer.

24 61. On April 28, 2016, McClain responded to UC 2 via email. The email provided
25 information to facilitate the wire transfer, including McClain’s bank name and address, routing
26 number, account number, and the account holder’s name.

62. The investment contract offered to UC 2 by McClain was not registered with the Commission as a security.

63. McClain never disclosed to UC 2 that, as of July 2014, McClain had previously entered into a similar agreement with Investors 1, 2, and 3, and that McClain lost most of their investment money.

64. McClain never disclosed to UC 2 that McClain had promised to reimburse Investors 1 and 3 for any losses they sustained, but later failed to satisfy those promises.

65. McClain never inquired as to UC 2's financial circumstances or whether UC 2 was an accredited investor.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

66. From on or about July 6, 2014, McClain has been offering securities in the form of investment contracts within or from Arizona.

67. The securities referred to above are not registered pursuant to Articles 6 or 7 of the Securities Act.

68. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

69. From on or about July 6, 2014, McClain has been offering securities within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

70. This conduct violates A.R.S. § 44-1842.

1 VI.

2 VIOLATION OF A.R.S. § 44-1991

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

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

10 a) Representing to UC 1 that the investment strategy employed a "very unique
11 structure focusing on protecting investment capital" while intending to trade in highly volatile foreign
12 currency markets and omitting that the investment strategy had lost nearly all of Investor 1's and
13 Investor 2's investments;

14 b) Representing to UC 1 that a 20% to 30% return was expected but omitting that
15 the investment strategy had lost nearly all of Investor 1's and Investor 2's investments;

16 c) Representing to UC 1 that "the risk structure that I have in place is set up to
17 allow the principle [*sic*] investment to remain intact" but omitting that the investment strategy
18 required risk to the principal, and that the investment strategy resulted in Investors 1 and 2 losing
19 nearly all of their principal;

20 d) Promising UC 1 that he would be reimbursed for certain losses but omitting that
21 he had failed to satisfy a similar promise to Investor 1;

22 e) Representing to UC 2 that his investment would double in two to four weeks but
23 omitting that the investment strategy had lost nearly all of Investor 1's, Investor 2's, and Investor 3's
24 investments;

25 72. This conduct violates A.R.S. § 44-1991.

VII.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

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2
3
4 73. Respondents McClain and Harmown are engaging in a transaction or transactions within
5 or from Arizona involving the provision of investment advisory services in which Respondents are,
6 directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue
7 statements of material fact or omitting to state material facts that are necessary in order to make the
8 statements made not misleading in light of the circumstances under which they are made; (iii)
9 misrepresenting professional qualifications with the intent that the client rely on the misrepresentation;
10 or (iv) engaging in transactions, practices, or courses of business that operate or would operate as a fraud
11 or deceit. Respondents' conduct includes, but is not limited to, the following:

12 a) Representing to UC 1 that the investment strategy employed a "very unique
13 structure focusing on protecting investment capital" while intending to trade in highly volatile foreign
14 currency markets and omitting that the investment strategy had lost nearly all of Investor 1's and
15 Investor 2's investments;

16 b) Representing to UC 1 that a 20% to 30% return was expected but omitting that
17 the investment strategy had lost nearly all of Investor 1's and Investor 2's investments;

18 c) Representing to UC 1 that "the risk structure that I have in place is set up to
19 allow the principle [*sic*] investment to remain intact" but omitting that the investment strategy
20 required risk to the principal, and that the investment strategy resulted in Investors 1 and 2 losing
21 nearly all of their principal;

22 d) Promising UC 1 that he would be reimbursed for certain losses but omitting that
23 he had failed to satisfy a similar promise to Investor 1;

24 e) Representing to UC 2 that his investment would double in two to four weeks but
25 omitting that the investment strategy had lost nearly all of Investor 1's, Investor 2's, and Investor 3's
26 investments;

1 74. This conduct violates A.R.S. § 44-3241.

2 **VIII.**

3 **TEMPORARY ORDER**

4 **Cease and Desist from Violating the Securities Act and IM Act**

5 THEREFORE, based on the above allegations, and because the Commission has determined
6 that the public welfare requires immediate action,

7 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C), 44-3212(B), and A.A.C. R14-4-307, that
8 Respondent, his agents, servants, employees, successors, assigns, and those persons in active concert or
9 participation with Respondent CEASE AND DESIST from any violations of the Securities Act and the
10 IM Act.

11 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
12 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

13 IT IS FURTHER ORDERED that if a request for hearing is made, this Temporary Order shall
14 remain effective from the date a hearing is requested until a decision is entered unless otherwise ordered
15 by the Commission.

16 IT IS FURTHER ORDERED that this Order shall be effective immediately.

17 **IX.**

18 **REQUESTED RELIEF**

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

- 20 1. Order Respondent to permanently cease and desist from violating the Securities Act and
21 IM Act, pursuant to A.R.S. §§ 44-2032 and 44-3292;
- 22 2. Order Respondent to pay the state of Arizona administrative penalties of up to five
23 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 24 3. Order Respondent to pay the state of Arizona administrative penalties of up to one
25 thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296; and
- 26 4. Order any other relief that the Commission deems appropriate.

X.

HEARING OPPORTUNITY

Respondent may request a hearing pursuant to A.R.S. §§ 44-1972 and 44-3212, and A.A.C. Rule 14-4-307. **If Respondent requests a hearing, Respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. Respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

If a request for hearing is not timely made, the Division will request that the Commission make permanent this Temporary Order, with written findings of fact and conclusions of law, which may include ordering restitution, assessing administrative penalties, or other relief.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

XI.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent requests a hearing, Respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Temporary Order and Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

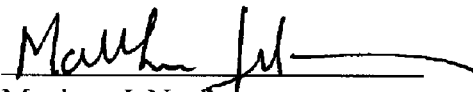
Additionally, Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Chris Nichols.

The Answer shall contain an admission or denial of each allegation in this Temporary Order and Notice and the original signature of Respondent or the Respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 28 day of June, 2016.


Matthew J. Neubert
Director of Securities