

ORIGINAL

OPEN MEETING ITEM

11/17/16



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

JODI JERICH
EXECUTIVE DIRECTOR



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

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Doug Little, Chairman
Bob Stump
Bob Burns
Tom Forese
Andy Tobin

Arizona Corporation Commission

DOCKETED

NOV 04 2016

FROM: Matthew J. Neubert *MJN*
Director of Securities

DOCKETED BY *[Signature]*

DATE: November 3, 2016

RE: Franklin AAA Holdings, LLC, Docket No. S-20930A-15-0211

CC: Jodi Jerich, Executive Director

RECEIVED
AZ CORP COMMISSION
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Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties ("Order") against Franklin AAA Holdings, LLC. The Order is a default order. The Division served Franklin with a copy of the underlying Notice of Opportunity on June 27, 2016. Franklin failed to file an answer or request a hearing.

The Order finds that, beginning in approximately November 2009, Franklin AAA Holdings offered sold securities in the form of notes and investment contracts to several persons. At least two persons failed to receive a full return of their principal investment. This activity violates the registration requirements found in A.R.S. §§ 44-1841 and -1842.

The Order requires Franklin AAA Holdings to permanently cease and desist from violating the Securities Act, to pay restitution of \$59,926.83 and to pay a \$2,500 administrative penalty. These payment obligations are joint and several with the other respondent in this matter, Anthony Clavien. The Securities Division recommends the Order as appropriate, in the public interest, and necessary for the protection of investors.

Originator: Ryan J. Millecam

11/13/16

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of)	DOCKET NO. S-20930A-15-0211
Franklin AAA Holdings, LLC, a Texas limited liability company, and)	DECISION NO. _____
Anthony Clavien, a single man,)	ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER FOR ADMINISTRATIVE PENALTIES
Respondents.)	
		Respondent: Franklin AAA Holdings, LLC

On June 24, 2015, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a 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 (the "Notice") against Franklin AAA Holdings, LLC and Anthony Clavien.

On July 27, 2016, the Division served a copy of the Notice, upon Franklin AAA Holdings, LLC, by personal service on Dana Pierson, the manager of Franklin AAA Holdings, LLC. No request for a hearing or answer to the Notice has been filed as of November 2, 2016.

I.
FINDINGS OF FACT

1. Respondent Clavien is a single man who resided in Arizona from time to time between November 2009 and 2012 (the "Relevant Period").
2. Respondent Franklin AAA Holdings, LLC ("FAH" or "Respondent") is a Texas limited liability company whose principal place of business and mailing address was located in Scottsdale, Arizona during the Relevant Period. FAH was not registered during the Relevant Period as a foreign entity qualified to do business in Arizona.

1 3. Clavien is listed as FAH's sole member in FAH's original, 2007 Certificate of
2 Formation; he also signed the Certificate as FAH's organizer. In FAH's Texas 2008 and 2009 Franchise
3 Tax Reports, Clavien is listed as FAH's president and president & director, respectively.

4 4. On February 28, 2009, FAH amended its Operating Agreement to make Dana Pierson
5 FAH's manager and her entity, Antiquities Holdings, LLC, a 40% member. In 2010 and 2011 Texas
6 Franchise Tax Reports, FAH listed Antiquities Holdings, LLC, as a member; Dana Pierson signed these
7 Reports as FAH's "Managing Member."

8 5. FAH was also licensed to transact business in the state of Georgia during the relevant
9 timeframe. The foreign-entity application that FAH submitted to the Georgia Secretary of State lists
10 Clavien as FAH's manager and provides a Scottsdale, Arizona address.

11 6. FAH was in the business of purchasing and selling real estate, including the purchase
12 of tax liens on homes in various states.

13 7. FAH funded its business, in part, by selling percentage interests in real estate
14 transactions. For example, an FAH document titled "Beechwood Deal" lists seven investors along
15 with each investor's percentage interest in the deal, along with the "acquisition cost," an "amount
16 paid" (a total of \$7,000), and an "amount owed." Another FAH document titled "Investor Totals"
17 lists 17 investors (the seven included in the "Beechwood Deal" document, FAH, and nine others).

18 8. At least four FAH investors (including two of the seven described in the preceding
19 paragraph) received securities from FAH in the form of investment contracts that were equity
20 interests in real estate transactions.

21 9. On behalf of FAH, Clavien was involved in the sale of investment contracts to at least
22 three FAH investors, including the two investors described in detail below.

23 10. In November 2009, Clavien's assistant introduced an Arizona resident ("AR1") to
24 Respondent for the purpose of discussing AR1's interest in investing in FAH's real estate
25 transactions.

1 11. AR1 met with Clavien and other FAH representatives in Arizona to discuss AR FAH
2 real estate transactions whereby AR1 would invest money and receive a note payable from the profit
3 of the transactions. In addition to this face-to-face meeting, AR1 corresponded with Clavien through
4 text messages and on Facebook and AR1 received emails from Clavien and other FAH
5 representatives.

6 12. Based on AR1's discussions with Clavien and other FAH representatives and the
7 emails from Clavien and other FAH representatives, AR1 invested with FAH on three separate
8 occasions. On 12/3/09, AR1 wired \$10,000 to FAH's account in a Texas-based bank. AR1's money
9 was to be used to fund real estate transactions. In exchange for this \$10,000 payment, FAH gave AR1
10 a promissory note titled "Promissory Note and Investment Agreement" dated 12/3/2009, in the
11 amount of \$10,000, payable on 12/2/2010. The document provides that it is governed by the laws of
12 the State of Arizona.

13 13. After not receiving payment from FAH on or before the 12/3/10 date, AR1 extended
14 the due date of the note. AR1 did not receive payment on the extended date or at any other time.

15 14. On 1/29/10, AR1 wired \$2,200 to FAH's Texas-bank account. This money was to be
16 used for FAH's legal fees connected to purchasing real property. In exchange for her investment,
17 AR1 received an investment contract in the form of a percentage interest in the profits that would be
18 made in connection with FAH selling the real property. AR1 received a \$1,273.17 return on this
19 investment.

20 15. On 2/4/10, AR1 wired \$3,000 to FAH's account in a Texas-based bank. AR1's money
21 was to be used to fund real estate transactions. AR1 made this payment according to the terms of a
22 Memorandum of Understanding dated 2/4/10, pursuant to which AR1 was a purchaser of an
23 investment contract in the form of a percentage interest in an investment property. FAH paid AR1
24 the sum of \$4,500 on that \$3,000 investment.

25 16. In sum, AR1 invested \$15,200 with FAH and received returns on those investments
26 totaling \$5,773.17.

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

9 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that FAH shall, jointly and
10 severally with respondent Clavien, pay an administrative penalty in the amount of \$2,500 as a result
11 of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on
12 the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding
13 shall accrue interest as allowed by law.

14 IT IS FURTHER ORDERED that the administrative penalty ordered in the preceding
15 paragraph will accrue interest at the rate of the lesser of (i) ten percent per annum or (ii) at a rate per
16 annum that is equal to one per cent plus the prime rate as published by the board of governors of the
17 federal reserve system in statistical release H. 15 or any publication that may supersede it on the date
18 that the judgment is entered.

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN LITTLE

COMMISSIONER STUMP

COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

IN WITNESS WHEREOF, I, JODI A. JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2016.

JODI A. JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

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

(RJM)

1 SERVICE LIST FOR Franklin AAA Holdings, LLC *et al.*

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John C. Kelly

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COPPERSMITH BROCKELMAN PLC

4

2800 North Central Avenue, Suite 1200

Phoenix, AZ 85004

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Attorney for Anthony Clavien

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Franklin AAA Holdings, LLC

c/o Antiquities Holdings, LLC

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Attn: Dana Pierson

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7740 N. 16th Street, Ste. 150

Phoenix, AZ 85020

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