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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

NOV 21 2016

COMMISSIONERS

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

DOCKETED BY GB

In the matter of:)	DOCKET NO. S-20975A-16-0208
GREGORY ALLEN MCCLAIN,)	
Respondent.)	DECISION NO. <u>75791</u>
)	ORDER TO CEASE AND DESIST AND
)	ORDER FOR ADMINISTRATIVE
)	PENALTIES

On June 28, 2016, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing against Respondent GREGORY ALLEN MCCLAIN.

On August 3, 2016, Respondent GREGORY ALLEN MCCLAIN was served. GREGORY ALLEN MCCLAIN did not file a Request for Hearing or an Answer to the Notice within the respective filing deadlines and has not filed a Request or Answer as of the date of this filing.

I.

FINDINGS OF FACT

1. Respondent Gregory Allen McClain ("McClain") is a resident of Cobb County, Georgia.
2. McClain is not registered with the Commission as a securities salesman, securities dealer, investment adviser, or investment adviser representative.
3. At all relevant times, McClain was the sole managing member, CEO, treasurer, and secretary of Harmown Investment Group, LLC ("HIG"), a Georgia limited liability company dissolved in 2012.
4. At all relevant times, McClain has been the CEO, treasurer, and secretary of Harmown, LLC ("Harmown"), an active Georgia limited liability company.

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

3 6. Advertisement 1 solicited money for investment and guaranteed a return of 10% to
4 30% per month.

5 7. A California resident (“Investor 1”) responded to Advertisement 1.

6 8. During subsequent communications with Investor 1, McClain and HIG guaranteed
7 that they would reimburse Investor 1 for any losses he might sustain.

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

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

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

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

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

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

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

19 16. By June 1, 2012, McClain and HIG had lost most of Investor 2’s investment.

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

21 18. In July 2014, McClain and Harmown published a new advertisement (“Advertisement
22 2”) on Craigslist.

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

25 20. Advertisement 2 also stated that if the account lost money, the investor would be
26 entitled to reimbursement.

1 21. A Nebraska resident ("Investor 3") responded to Advertisement 2.

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

4 23. At McClain's and Harmown's instruction, Investor 3 opened an account with an
5 online brokerage firm and gave McClain and Harmown the authority to trade with his investment
6 funds.

7 24. By mid-September 2014, McClain and Harmown had lost most of Investor 3's
8 investment.

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

10 26. McClain and Harmown never reimbursed Investor 3 for the losses he sustained.

11 27. In July 2014, McClain and Harmown published another advertisement
12 ("Advertisement 3") on Craigslist. Advertisement 3 was published in the Craigslist classifieds
13 directed towards residents of Phoenix, Arizona.

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

16 29. Advertisement 3 stated "I am a funds manager and am looking for the right people to
17 grow with."

18 30. Advertisement 3 also represented that "The maximum risk to the account will be 10%,
19 but in an effort to build clientele faster, I am offering new clients the opportunity to invest essentially
20 risk free."

21 31. Advertisement 3 also stated that, "if at any time your account is negative 10%, I will
22 fully refund that amount."

23 32. On July 18, 2014, an Arizona resident working undercover for the Division ("UC 1")
24 responded to Advertisement 3 via email. The email requested additional information regarding the
25 nature of the investment and the ability to withdraw funds.
26

1 33. On July 19, 2014, McClain responded on behalf of Harmown to the July 18 email
2 from UC 1. McClain's and Harmown's response stated that the investment arrangement was "a very
3 unique structure focusing on protecting investment capital"

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

7 35. The July 19 email to UC 1 also provided UC 1 with instructions as to commencing
8 the investment. According to the email, UC 1 was to set up a managed account with Interactive
9 Brokers "which allows [Respondents] to trade on [UC 1's] behalf while also trading other accounts
10 under one platform with proportions being divided automatically according to account size."

11 36. In the July 19, email, Respondents also represented that "the risk structure that I have
12 in place is set up to allow the principle [*sic*] investment to remain intact while 20% - 30% returns are
13 targeted."

14 37. The July 19 email also reiterated Respondents' promise to refund any loss at the end
15 of 90 days, and immediately refund any loss of 10%.

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

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

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

22 41. The Agreement identifies Harmown as the "Manager" and McClain as the "Asset
23 Manager."

24 42. The Agreement authorizes Harmown to use the investor's money to engage in
25 currency trading, and provides that Harmown shall receive a 30% commission on a monthly basis.
26

1 43. The Agreement provides that “Client authorizes Manager to act on Client’s behalf to
2 buy, sell, and trade in the currency market.”

3 44. The investment contract offered by McClain and Harmown to UC 1 was not registered
4 with the Commission as a security.

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

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

10 47. Neither McClain nor Harmown inquired as to UC 1’s financial circumstances or
11 whether UC 1 was an accredited investor.

12 48. In or around April 1, 2016, McClain published another advertisement on Craigslist
13 (“Advertisement 4”).

14 49. Advertisement 4 was published in the Craigslist classifieds directed towards residents
15 of Phoenix, Arizona.

16 50. Advertisement 4 is titled “\$5,000” and states that McClain is “looking for short term
17 arrangements with people who can invest \$5000 or more for 2-4 weeks.”

18 51. Advertisement 4 also states that McClain is “focused on raising as much capital as
19 possible.”

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

22 53. On April 21, 2016, an Arizona resident working undercover for the Division (“UC
23 2”) called McClain in response to Advertisement 4.

24 54. Over the next few days, McClain and UC2 exchanged voicemails providing contact
25 information to each other.

26

1 55. On April 26, 2016, McClain sent an email to UC 2 regarding the investment offered
2 in Advertisement 4. According to the email, UC 2 would create an account with an online broker
3 and permit McClain to trade on UC 2's behalf.

4 56. In the April 26, 2016 email, McClain represented that "My goal will be to double
5 your account in 2 weeks, but it will generally happen within a 2-4 week period." McClain also stated
6 in the email that, under the arrangement, he would be entitled to 50% of UC 2's profit at the end of
7 each month.

8 57. UC 2 responded to McClain's email on April 26, 2016. The email to McClain stated
9 that UC 2 would like to invest but was inexperienced with trading.

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

13 59. On April 28, 2016, UC 2 responded to McClain via email. The email to McClain
14 stated that UC 2 intended to invest \$10,000 and preferred to tender the investment money via wire
15 transfer.

16 60. On April 28, 2016, McClain responded to UC 2 via email. The email provided
17 information to facilitate the wire transfer, including McClain's bank name and address, routing
18 number, account number, and the account holder's name.

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

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

24 63. McClain never disclosed to UC 2 that McClain had promised to reimburse Investors
25 1 and 3 for any losses they sustained, but later failed to satisfy those promises.

26

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

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

7 e) Representing to UC 2 that his investment would double in two to four weeks but
8 omitting that the investment strategy had lost nearly all of Investor 1’s, Investor 2’s, and Investor 3’s
9 investments.

10 70. Respondent violated A.R.S. § 44-3241 by engaging in a transaction or transactions
11 within or from Arizona involving the provision of investment advisory services in which Respondent
12 was, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue
13 statements of material fact or omitting to state material facts that are necessary in order to make the
14 statements made not misleading in light of the circumstances under which they are made; (iii)
15 misrepresenting professional qualifications with the intent that the client rely on the misrepresentation;
16 or (iv) engaging in transactions, practices, or courses of business that operate or would operate as a fraud
17 or deceit. Respondent’s conduct includes, but is not limited to, the following:

18 a) Representing to UC 1 that the investment strategy employed a “very unique
19 structure focusing on protecting investment capital” while intending to trade in highly volatile foreign
20 currency markets and omitting that the investment strategy had lost nearly all of Investor 1’s and
21 Investor 2’s investments;

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

24 c) Representing to UC 1 that “the risk structure that I have in place is set up to
25 allow the principle [*sic*] investment to remain intact” but omitting that the investment strategy
26

1 required risk to the principal, and that the investment strategy resulted in Investors 1 and 2 losing
2 nearly all of their principal;

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

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

8 71. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. §§ 44-
9 2032 and 44-3292.

10 72. Respondent's conduct is grounds for administrative penalties under A.R.S. §§ 44-
11 2036 and 44-3296.

12 **III.**

13 **ORDER**

14 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission
15 finds that the following relief is appropriate, in the public interest, and necessary for the protection of
16 investors:

17 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-3292, that Respondent, and any of
18 Respondent's agents, employees, successors and assigns, permanently cease and desist from
19 violating the Securities Act and IM Act.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-3296, that Respondent
21 shall pay an administrative penalty in the amount of \$12,000. Payment is due in full on the date of
22 this Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue
23 interest as allowed by law.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

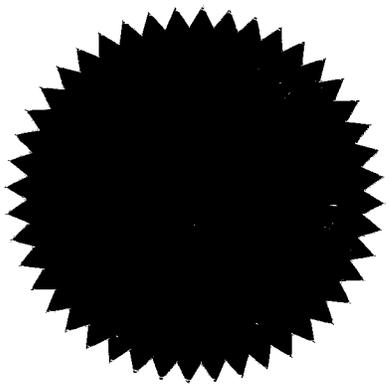

CHAIRMAN LITTLE


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 21st day of November, 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.

(SCB)

1 Service List for: Gregory McClain

2 Gregory McClain
3 5904 Vintage Oaks Pass
4 Mableton, GA 30126
5 Respondent

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

On this 11th day of October, 2016, the foregoing document was filed with Docket Control as a Securities Division Memorandum & Proposed Order, and copies of the foregoing were mailed on behalf of the Securities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Gregory McClain
5904 Vintage Oaks Pass
Mableton, GA 30126
Respondent

By: *Janie L. Dwyer*