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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DEC 05 2016

COMMISSIONERS

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

DOCKETED BY 

In the matter of)
)
Franklin AAA Holdings, LLC, a Texas)
limited liability company, and)
)
Anthony Clavien, a single man,)
)
Respondents.)

DOCKET NO. S-20930A-15-0211

DECISION NO. 75821

ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES, AND CONSENT TO SAME

BY: RESPONDENT ANTHONY CLAVIEN

Respondent Anthony Clavien ("Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. Respondent is a single man who resided in Arizona from time to time between November 2009 and 2012 (the "Relevant Period").

2. Franklin AAA Holdings, LLC ("FAH") 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. Respondent 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
3 Franchise Tax Reports, Respondent is listed as FAH's president and president & director, respectively.

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

7 5. FAH was in the business of purchasing and selling real estate, including the
8 purchase of tax liens on homes in various states.

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

14 7. At least four FAH investors (including two of the seven described in the preceding
15 paragraph) received securities from FAH in the form of investment contracts that were equity
16 interests in real estate transactions.

17 8. On behalf of FAH, Respondent was involved in the sale of investment contracts to at
18 least three FAH investors, including the two investors described in detail below.

19 9. In November 2009, Clavien's assistant introduced an Arizona resident ("AR1") to
20 Respondent for the purpose of discussing AR1's interest in investing in FAH's real estate
21 transactions.

22 10. AR1 met with Respondent and other FAH representatives in Arizona to discuss AR
23 FAH real estate transactions whereby AR1 would invest money and receive a note payable from
24 the profit of the transactions. In addition to this face-to-face meeting, AR1 corresponded with
25 Respondent through text messages and on Facebook and AR1 received emails from Respondent
26 and other FAH representatives.

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

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

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

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

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

22 16. AR1 was not an accredited investor nor sophisticated in real estate transactions at
23 the time of the investments and AR1 did not participate in the management of FAH or in FAH's
24 selection of the investment properties.

25 17. A second Arizona resident ("AR2") became interested in investing in FAH after
26 discussing the investment with Respondent. AR2 met with Respondent and two other FAH

1 representatives in FAH's Scottsdale offices where AR2 was given a presentation on FAH's various
2 real estate deals that he could invest in.

3 18. In August 2010, AR2 invested \$50,000 with FAH. In return for this investment,
4 FAH issued a note to AR2 in the amount of \$50,000, bearing 12% interest per annum. The note
5 was dated 8/12/2010 with a due date of 8/12/13. The note states that it is governed by the laws of
6 Arizona.

7 19. A few months later, AR2 invested an additional \$25,000 with FAH. In return for this
8 investment, FAH issued a note to AR2 in the amount of \$25,000, bearing 12% interest per annum.
9 The note was dated 10/27/2010 with a due date of 10/27/13. The note states that it is governed by
10 the laws of Arizona.

11 20. FAH made monthly payments to AR2 for six months according to the terms of his
12 notes (i.e. 12% per annum on the principal sum of \$75,000). FAH's monthly payments to AR2
13 totaled \$4,500. FAH made an additional \$20,000 payment to AR2 in late 2014. Thus AR2 received
14 returns totaling \$24,500 on his \$75,000 investment.

15 21. Together, AR1 and AR2 invested \$90,200 in FAH and received returns on those
16 investments totaling \$30,273.17, leaving an outstanding amount owed of \$59,926.83.

17 II.

18 CONCLUSIONS OF LAW

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

21 2. Respondent offered or sold securities within or from Arizona, within the meaning of
22 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

23 3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were
24 neither registered nor exempt from registration.

25 4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither
26 registered as a dealer or salesman nor exempt from registration.

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

9 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent shall pay an
10 administrative penalty in the amount of \$2,500 as a result of the conduct set forth in the Findings of
11 Fact and Conclusions of Law. The administrative penalty shall be due no later than 90 days after
12 the date of this Order. Any amount outstanding shall accrue interest at the rate of 4.5 percent per
13 annum beginning 90 days after from the date of this Order until paid in full. Respondent and FAH
14 are jointly and severally liable for the payment of this penalty, thus any penalty payments recovered
15 by the Commission from FAH shall be credited against the administrative penalty owed by
16 Respondent. Payment (whether by Respondent or by FAH) shall be made to the "State of Arizona."

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

20 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
21 Respondent does not comply with this Order, any outstanding balance may be deemed in default
22 and shall be immediately due and payable.

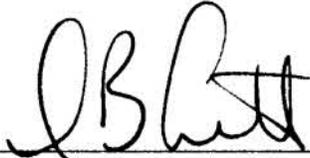
23 IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the
24 Commission may bring further legal proceedings against Respondent, including application to the
25 superior court for an order of contempt.

26

1 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
2 Order shall be deemed binding against any Respondent under this Docket Number who has not
3 consented to the entry of this Order.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN LITTLE

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10 COMMISSIONER STUMP

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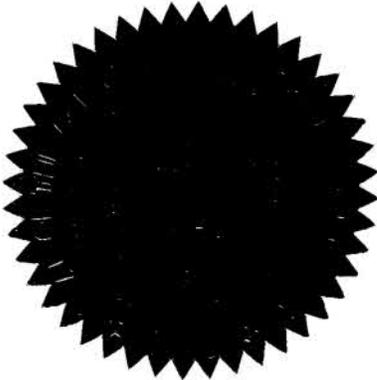
12 COMMISSIONER FORESE

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14 COMMISSIONER TOBIN

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16 COMMISSIONER BURNS



20 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive
21 Director of the Arizona Corporation Commission, have
22 hereunto set my hand and caused the official seal of the
23 Commission to be affixed at the Capitol, in the City of
24 Phoenix, this 07th day of December, 2016.

25 

26 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)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent Anthony Clavien, an individual, admits the jurisdiction of the
3 Commission over the subject matter of this proceeding. Respondent acknowledges that Respondent
4 has been fully advised of Respondent's right to a hearing to present evidence and call witnesses and
5 Respondent knowingly and voluntarily waives any and all rights to a hearing before the
6 Commission and all other rights otherwise available under Article 11 of the Securities Act and Title
7 14 of the Arizona Administrative Code. Respondent acknowledges that this Order constitutes a
8 valid final order of the Commission.

9 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
10 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
11 resulting from the entry of this Order.

12 3. Respondent acknowledges and agrees that this Order is entered into freely and
13 voluntarily and that no promise was made or coercion used to induce such entry.

14 4. Respondent acknowledges that he has been represented by an attorney in this matter,
15 that he has reviewed this Order with his attorney, John Kelly of Coppersmith Brockelman PLC, and
16 that he understands all terms it contains.

17 5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law
18 contained in this Order. Respondent agrees that he shall not contest the validity of the Findings of
19 Fact and Conclusions of Law contained in this Order in any present or future proceeding in which
20 the Commission is a party.

21 6. Respondent further agrees that he shall not deny or contest the Findings of Fact and
22 Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or
23 (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)").
24 Respondent further agree that in any such bankruptcy or non-criminal proceedings, the Findings of
25 Fact and Conclusions of Law contained in this Order may be taken as true and correct and that this
26 Order shall collaterally estop them from re-litigating with the Commission or any other state

1 agency, in any forum, the accuracy of the Findings of Fact and Conclusions of Law contained in
2 this Order. In the event Respondent pursues bankruptcy protection in the future, he further agrees
3 that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following
4 circumstances exist:

5 A. The obligations incurred as a result of this Order are a result of the conduct set forth
6 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona
7 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

8 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
9 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by
10 Respondent pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty,
11 citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by
12 Respondent pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

13 7. By consenting to the entry of this Order, Respondent agrees not to take any action or
14 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
15 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
16 basis.

17 8. While this Order settles this administrative matter between Respondent and the
18 Commission, Respondent understands that this Order does not preclude the Commission from
19 instituting other administrative or civil proceedings based on violations that are not addressed by
20 this Order.

21 9. Respondent understands that this Order does not preclude the Commission from
22 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
23 that may be related to the matters addressed by this Order.

24 10. Respondent understands that this Order does not preclude any other agency or
25 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
26 proceedings that may be related to matters addressed by this Order.

1 11. Respondent agrees that he will not apply to the state of Arizona for registration as a
2 securities dealer or salesman or for licensure as an investment adviser or investment adviser
3 representative until such time as all restitution and penalties under this Order are paid in full.

4 12. Respondent agrees that he will not exercise any control over any entity that offers or
5 sells securities within or from the state of Arizona or provides investment advisory services within
6 or from the state of Arizona until such time as all restitution and penalties under this Order are paid
7 in full.

8 13. Respondent agrees that he will continue to cooperate with the Securities Division
9 including, but not limited to, providing complete and accurate testimony at any hearing in this
10 matter and cooperating with the state of Arizona in any related investigation or any other matters
11 arising from the activities described in this Order.

12 14. Respondent consents to the entry of this Order and agrees to be fully bound by its
13 terms and conditions.

14 15. Respondent acknowledges and understands that if he fails to comply with the
15 provisions of the order and this consent, the Commission may bring further legal proceedings
16 against him, including application to the superior court for an order of contempt.

17 16. Respondent understands that default shall render him liable to the Commission for
18 its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

19 17. Respondent agrees and understands that if he fails to make any payment as required
20 in the Order, any outstanding balance shall be in default and shall be immediately due and payable
21 without notice or demand. Respondent agrees and understands that acceptance of any partial or late
22 payment by the Commission is not a waiver of default by the Commission.

1 Respondent Signature Page

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Respondent Anthony Clavien

State of ENGLAND, UK
County LONDON)^{ss}

SUBSCRIBED AND SWORN TO BEFORE me this 20 day of October, 2016.

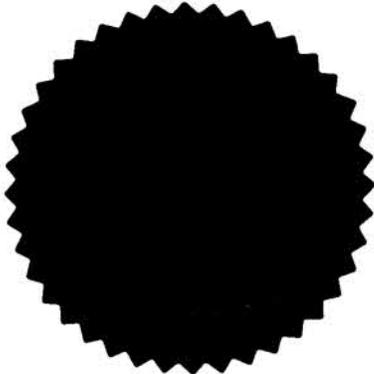


NOTARY PUBLIC

My commission expires:

WITH LIFE

Nathalie Lee-Kong
NOTARY PUBLIC
36 Vera Road, Fulham
London SW6 6QW, ENGLAND
Email: Info@nlknotary.co.uk
Mobile: 07557 019 878



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

2

John C. Kelly
3 COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1200
4 Phoenix, AZ 85004

5

Attorney for Anthony Clavien

6

7

Franklin AAA Holdings, LLC
8 c/o Antiquities Holdings, LLC
Attn: Dana Pierson
9 7740 N. 16th Street, Ste. 150
Phoenix, AZ 85020

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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 Franklin AAA Holdings, LLC, a Texas limited)
10 liability company, and)
11 Anthony Clavien, a single man,)
12 Respondents.)

DOCKET NO. S-20930A-15-0211

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

13 On this 3rd day of November, 2016, the foregoing document was filed with Docket
14 Control as a Securities Division Memorandum & Proposed Order, and copies of the foregoing were
15 mailed on behalf of the Securities Division to the following who have not consented to email service.

16 On this date or as soon as possible thereafter, the Commission's eDocket program will automatically
17 email a link to the foregoing to the following who have consented to email service.

18 John C. Kelly
19 Coppersmith Brockelman PLC
20 2800 North Central Avenue, Suite 1200
21 Phoenix, AZ 85004
22 jkelly@cblawyers.com
23 Attorney for Respondent Clavien
24 **Consented to Service by Email**

25 COPY of the foregoing mailed this 3rd day of November, 2016, to:

26 Franklin AAA Holdings, LLC
c/o Antiquities Holdings, Dana Pierson – Manager
7740 N. 16th St. Ste. 150
Phoenix, AZ 85020

By: *Jenni L. O'Leary*