

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

AZ CO. SEC. DIVISION  
DOCK. CONTROL

COMMISSIONERS

DOCKETED

2017 JUN 19 P 2:12

TOM FORESE – Chairman  
BOB BURNS  
DOUG LITTLE  
ANDY TOBIN  
BOYD DUNN

JAN 19 2017

DOCKETED BY

In the matter of:

DOCKET NO. S-21002A-17-0016

SIMPLY SMART HOMES, LLC, an  
Arizona limited liability company,

**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**

SMART ENTERPRISES, LLC, an Arizona  
limited liability company,

RICHARD A. SMART, a single man,

Respondents.

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that Respondents Simply Smart Homes, LLC, and Richard A. Smart have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”)

The Division further alleges that Respondent Richard A. Smart is a person controlling Simply Smart Homes, LLC within the meaning of A.R.S. § 44-1999, so that he is jointly and severally liable under A.R.S. § 44-1991, to the same extent as Simply Smart Homes, LLC for violations of the Securities Act.

The Division further alleges that Respondent Smart Enterprises, LLC is a person controlling Simply Smart Homes, LLC within the meaning of A.R.S. § 44-1999, so that Smart Enterprises, LLC is jointly and severally under A.R.S. § 44-1991, to the same extent as Simply Smart Homes, LLC for violations of the Securities Act.

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**I.**

**JURISDICTION**

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

**II.**

**RESPONDENTS**

2. Simply Smart Homes, LLC (“Simply Smart Homes”) is an Arizona limited liability company organized under the laws of the state of Arizona since April 2015. Simply Smart Homes has not been registered by the Commission as a securities salesman or dealer.

3. Smart Enterprises, LLC (“Smart Enterprises”) is an Arizona limited liability company organized under the laws of the state of Arizona since August 2014. Smart Enterprises has not been registered with the Commission as a securities salesman or dealer.

4. Richard A. Smart (“R. Smart”) has been at all relevant times an unmarried man and resident of the state of Arizona. R. Smart has not been registered by the Commission as a securities salesman or dealer.

5. R. Smart is and has been for all relevant times the statutory agent and a managing member for Simply Smart Homes, and the statutory agent and sole managing member for Smart Enterprises.

6. Smart Enterprises is and has been for all relevant time a managing member of Simply Smart Homes.

7. Simply Smart Homes, Smart Enterprises, and R. Smart may be referred to collectively as “Respondents.”

**III.**

**FACTS**

8. In April 2015, Simply Smart Homes was formed with the purpose of “flip[ping] properties” for a profit.



1 16. Investor 1's JVA was silent as to the recordation of her security interest. However,  
2 the JVA stated that Investor 1 "will be added and considered as a 2<sup>nd</sup> lien holder<sup>1</sup> of the subject  
3 property with all other items of this agreement being the same."

4 **INVESTOR 2**

5 17. At all relevant times, Investor 2 was a resident of Arizona.

6 18. On or about December 2015, Investor 2 was first introduced to R. Smart at a financial  
7 group coaching program. R. Smart represented to Investor 2, that he was an experienced and  
8 successful real estate investor.

9 19. R. Smart offered Investor 2 of an opportunity to invest in the Meadowbrook Property,  
10 and suggested that Investor 2 meet him at the Meadowbrook Property, to take a look.

11 20. On or about January 2016, Investor 2 met R. Smart at the Meadowbrook Property. R.  
12 Smart informed Investor 2, that he was looking for an investor to provide funding (\$20,000) that  
13 would only be used for the repair and renovation of the Meadowbrook Property. R. Smart further  
14 stated that the renovations/repairs to the Meadowbrook Property would be completed in a few weeks  
15 and the property would be sold for a profit in approximately six weeks. R. Smart also gave Investor  
16 2 a tour of the Stancrest Property.

17 21. R. Smart represented to Investor 2 that he should be done soon on the Meadowbrook  
18 Property and "[i]f you want to place your money and make some money really quickly, throw it into  
19 Meadowbrook." And, that he had buyers lined up to purchase the Meadowbrook Property, as soon  
20 as the rehab of the home was finished.

21 22. On or about January 26, 2016, Investor 2 invested approximately \$20,000 in exchange  
22 for a promised 12% return, upon sale of the Meadowbrook Property. A Promissory Note<sup>2</sup> ("Note")  
23 and a JVA were executed.

24 23. According to Investor 2's JVA, the funds were to be specifically used to "complete  
25 the project" regarding the renovations on the Meadowbrook Property.

26 <sup>1</sup> On May 2, 2016, Investor 1's JVA was recorded with the Maricopa County Recorder's Office.

<sup>2</sup> On January 26, 2016, Investor 2 recorded his Promissory Note with the Maricopa County Recorder's Office.



1 100 real estate investing deals. If there is a conventional OR CREATIVE WAY to do a deal and  
2 invest in real estate, to hold for the long-term or to wholesale or fix/flip/rehab for a profit, I have  
3 probably done it.”

4 31. On or about February 19, 2016, R. Smart offered Investor 3 a chance to invest in the  
5 Meadowbrook Property. R. Smart represented to Investor 3, that this was an excellent opportunity.  
6 R. Smart stated to Investor 3, that he needed \$30,000 to finish the property and that he would have it  
7 on the market within the next 30 days. R. Smart stated that he would have their money back within  
8 45-60 days with 12% interest.

9 32. R. Smart told Investor 3 that their investment money would only be used to pay  
10 contractors and to cover expenses that would be incurred related to the sale of the Meadowbrook  
11 Property.

12 33. R. Smart stated to Investor 3 that he has never lost money on an investment because  
13 he knows what to buy and when to buy it. R. Smart guaranteed that Investor 3 would receive all of  
14 their investment back.

15 34. On or about February 26, 2016, Investor 3 invested approximately \$30,000 in  
16 exchange for a promised 12% return, upon sale of the Meadowbrook Property. Investor 3 signed a  
17 Note and JVA.

18 35. According to the Investor 3's JVA (as well as Investor 2's), the total amount of the  
19 investor's funds “shall be deposited by Investors into the business account of Simply Smart Homes,  
20 LLC at Wells Fargo Bank.” R. Smart individually provided Investors 2 and 3 with a bank account  
21 number, and instructed Investors 2 and 3 to wire transfer and/or deposit their individual investment  
22 funds into the bank account. Investors 2 and 3 complied with R. Smart's instructions. However,  
23 Investors 2 and 3 were not told that the bank account number provided by R. Smart was for the Smart  
24 Enterprises' business account, and not the Simply Smart Homes' business account.

25 36. R. Smart is the sole authorized signatory for the Simply Smart Homes' and Smart  
26 Enterprises' business accounts. Both business accounts are maintained at the Wells Fargo Bank.

1           37.     According to Investor 3's JVA (as well as Investor 2's), "the Developers [R. Smart  
2 and Simply Smart Homes] shall not have the authority, without the prior written approval of the  
3 Investor's, to...commingle Investment Funds with any funds of the Developers or any other funds."  
4 In light of that statement, R. Smart admitted that he uses the Smart Enterprises' business account for  
5 his personal living expenses, because "it's to keep from being sued...I learnt that technique in an  
6 asset judgment class, many moons ago. The phrase that I keep hearing is own nothing but control  
7 everything."

8           38.     On or about February 26, 2016, R. Smart issued a check for \$11,000 from the Smart  
9 Enterprises' business account, to Burley and Associates. R. Smart admitted that the \$11,000 check  
10 would not have cleared his account had Investor 3 not deposited funds into Smart Enterprises'  
11 business account. R. Smart further admits, "I wouldn't have written it if the money wasn't in there."  
12 R. Smart stated that the \$11,000 check (for real estate investment classes and training) had nothing  
13 to do with the Meadowbrook Property.

14           39.     On or about March 11, 2016, R. Smart and Simply Smart Homes, signed Investor 3's  
15 Note and JVA<sup>4</sup>.

16           40.     According to Investor 3's JVA (as well as Investor 2's), "a first lien pursuant to a first  
17 mortgage on the Property, held by a different lender, (the "First Lien Holder"), in the amount of  
18 \$290,000.00 ("First Note")...the Property is not subject to any other liens, claims or encumbrances,  
19 nor is it subject to any cloud of title." R. Smart and Simply Smart Homes stated to Investor 3, that  
20 they were the only investors involved in the Meadowbrook Property, and that they were in the 2<sup>nd</sup>  
21 lien holder position on the Meadowbrook Property. When in fact, Investors 1 and 2 had already  
22 invested, and Investor 2 was in the 2<sup>nd</sup> lien holder position on the Meadowbrook Property.

23           41.     According to Investor 3's (as well as Investor 2's) Note, R. Smart and Simply Smart  
24 Homes represented that, "[t]he Lender will be listed as a lender on the title of the Security whether  
25 or not the Lender elects to perfect the security interest in the Security." Investors 2 and 3,

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26 <sup>4</sup> On March 18, 2016, Investor 3 recorded their JVA, Note, and a Deed of Trust with the Maricopa County Recorder's Office.

1 unbeknownst to each other, individually took it upon themselves to record their security interests  
2 with the Maricopa County Recorder's Office.

3 42. According to Investor 3's JVA, R. Smart and Simply Smart Homes are "responsible  
4 for acquiring, repairing, renovating, and selling the Property." Investor 3 did not participate in the  
5 renovation or make any decisions involving the renovation of the Meadow Property.

6 43. Respondents used certain funds deposited by Investor 3 on real estate investment  
7 classes, travel, dining, and other expenses not related to the Meadowbrook Property.

8 **INVESTOR 4**

9 44. At all relevant times, Investor 4 (husband and wife) were residents of Arizona.

10 45. On or about April 2016, Investor 4 were introduced to R. Smart, by a third party. R.  
11 Smart stated to Investor 4 that he was a professional real estate investor, who had a history of  
12 successfully buying homes through foreclosure, fixing, and then renting them for a profit. And, that  
13 currently he was doing this with many homes and was looking for investors to contribute capital so  
14 that he could buy more homes, fix them and/or upgrade them, and then rent them for a profit.

15 46. On or about April 4, 2016, Investor 4 invested \$50,000 with a promised 10% annual  
16 rate of return. A Letter of Understanding and a JVA were executed.

17 47. According to Investor 4's JVA, R. Smart and Simply Smart Homes' role was to  
18 "locate, negotiate for, acquire and manage investment properties... and be responsible for the day-  
19 to-day operations." Investor 4's role was to "provide the money and qualify for financing." Investor-  
20 4 did not participate in the acquisition, renovation, or management of any investment properties.

21 48. On or about April 4, 2016, Investor 4's \$50,000 investment funds were deposited into  
22 Simply Smart Homes' business account. At the time of the deposit, the Simply Smart Homes'  
23 business account had a balance of approximately \$143. On or about April 5, 2016, R. Smart did an  
24 online transfer of \$11,000 from the Simply Smart Homes' business account to the Smart Enterprises'  
25 business account. The online transfer was classified as "Burley Fee." On or about April 19, 2016, R.

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1 Smart issued a check for \$4,389.86 from the Simply Smart Homes' business account to a real estate  
2 investment class and training program.

3 49. Investor 4 was told that their investment funds would only be used towards buying  
4 homes, fixing them, and then renting them for a profit.

5 50. Investor 4 was not told about the investors that invested [and never received a return  
6 on their investments] in the Meadowbrook Property.

7 51. Investor 4 has only received \$1,250 back on their investment.

8 52. Respondents used certain funds deposited by Investor 4 on real estate investment  
9 classes, travel, dining, and other expenses not related to the investment.

10 **COMMON TO ALL INVESTORS**

11 53. R. Smart failed to disclose to at least Investors 2-4 that he and Simply Smart Homes  
12 stopped making payments on the Meadowbrook and Stancrest Property loans. R. Smart also failed  
13 to disclose to at least Investors 2-4 that in January of 2016, he and Simply Smart Homes had defaulted  
14 on both mortgage loans and Notices of Foreclosure were filed on both properties.

15 54. Contrary to what R. Smart told Investors 2-4 the Meadowbrook Property was his first  
16 time flipping a house in Arizona, using his own funding to acquire a home, and overseeing a house  
17 renovation.

18 55. R. Smart failed to disclose any risks associated with investing in real estate to at least  
19 Investors 2 and 3.

20 56. R. Smart failed to disclose to at least Investors 2-4 that he had at least six judgments  
21 totaling \$7,331.01 entered against him in the State of Utah, for unpaid State income tax liens.

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1 IV.

2 VIOLATION OF A.R.S. § 44-1841

3 (Offer or Sale of Unregistered Securities)

4 57. From at least August 13, 2015 until at least April 4, 2016, R. Smart and Simply Smart  
5 Homes offered or sold securities in the form of promissory notes and/or investment contracts, within or  
6 from Arizona.

7 58. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
8 Securities Act.

9 59. This conduct violates A.R.S. § 44-1841.

10 V.

11 VIOLATION OF A.R.S. § 44-1842

12 (Transactions by Unregistered Dealers or Salesmen)

13 60. R. Smart and Simply Smart Homes offered or sold securities within or from Arizona  
14 while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

15 61. This conduct violates A.R.S. § 44-1842.

16 VI.

17 VIOLATION OF A.R.S. § 44-1991

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

19 62. In connection with the offer or sale of securities within or from Arizona, Respondents R.  
20 Smart and Simply Smart Homes directly or indirectly: (i) employed a device, scheme, or artifice to  
21 defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary  
22 in order to make the statements made not misleading in light of the circumstances under which they  
23 were made; or (iii) engaged in transactions, practices, or courses of business that operated or would  
24 operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not  
25 limited to, the following:

1 a) R. Smart and Simply Smart Homes misrepresented to Investors 2-3 that their  
2 investment funds would be only used on the Meadowbrook Property. When in fact, some of their  
3 investment funds were used for R. Smart's personal expenses;

4 b) R. Smart and Simply Smart Homes misrepresented to Investor 4 that their  
5 investment funds would be only used on the investment. When in fact, some of their investment funds  
6 were used for R. Smart's personal expenses;

7 c) R. Smart misrepresented to Investors 2-4 that was he was an experienced and  
8 successful real estate investor, who had funded and overseen many home purchases that were fixed and  
9 flipped for a profit. When in fact, R. Smart admitted that he had little or no experience in purchasing  
10 homes, fixing and flipping them for a profit;

11 d) R. Smart and Simply Smart Homes misrepresented to Investor 2 that there were  
12 no other investors involved with the Meadowbrook Property. When in fact, Investor 1 had already  
13 invested;

14 e) R. Smart and Simply Smart Homes misrepresented to Investor 3 that there were  
15 no other investors involved with the Meadowbrook Property, and that Investor 3 would be in the 2<sup>nd</sup> lien  
16 holder position. When in fact, Investors 1 and 2 had already invested, and Investor 2 was in the 2<sup>nd</sup> lien  
17 holder position;

18 f) R. Smart misrepresented to Investor 3 that the Meadowbrook Property was an  
19 excellent investment opportunity and he guaranteed that they would receive a return of all of their  
20 investment. When in fact, R. Smart had been notified that the Meadowbrook Property would be  
21 foreclosed on;

22 g) R. Smart and Simply Smart Homes failed to disclose to at least Investors 2 and  
23 3 any risks associated with investing in the Meadowbrook Property, even though the Meadowbrook  
24 Property was in pre-foreclosure;

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1 h) R. Smart and Simply Smart Homes failed to disclose to at least Investors 2-4,  
2 that from at least April 2005 until at least September 2009, R. Smart had at least six judgments entered  
3 against him;

4 i) R. Smart and Simply Smart Homes failed to disclose to Investor 4 that they failed  
5 to repay Investors 1-3 pursuant to the terms of their investment contracts; and

6 j) R. Smart and Simply Smart Homes failed to disclose to Investor 2-4 that their  
7 investment funds would be commingled with and/or transferred to the Smart Enterprises' business  
8 account for R. Smart's personal use.

9 63. This conduct violates A.R.S. § 44-1991.

10 **VII.**

11 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

12 64. R. Smart directly or indirectly controlled Simply Smart Homes within the meaning of  
13 A.R.S. § 44-1999. Therefore, R. Smart is jointly and severally liable under A.R.S. § 44-1999, to the  
14 same extent as Simply Smart Homes for any violations of A.R.S. § 44-1991.

15 65. Smart Enterprises directly or indirectly controlled Simply Smart Homes within the  
16 meaning of A.R.S. § 44-1999. Therefore, Smart Enterprises is jointly and severally liable under A.R.S.  
17 § 44-1999, to the same extent as Simply Smart Homes for any violations of A.R.S. § 44-1991.

18 **VIII.**

19 **REQUESTED RELIEF**

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

21 1. Order Respondents R. Smart and Simply Smart Homes to permanently cease and desist  
22 from violating the Securities Act, pursuant to A.R.S. §44-2032;

23 2. Order Respondents R. Smart and Simply Smart Homes to take affirmative action to  
24 correct the conditions resulting from Respondents' acts, practices, or transactions, including a  
25 requirement to make restitution pursuant to A.R.S. § 44-2032;



## X.

## ANSWER REQUIREMENT

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

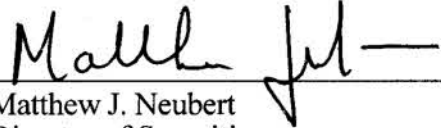
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Michael Shaw.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or 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 the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the 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.

Dated this 19 day of January, 2017.

  
Matthew J. Neubert  
Director of Securities