



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE - Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

Arizona Corporation Commission

DOCKETED

MAR 27 2018

DOCKETED BY
MLD

2018 MAR 27 A 11:11

RECEIVED
AZ CORP COM
DOCKET CONTROL

In the matter of:
AZ INVESTMENT PROPERTY EXPERTS,
LLC, an Arizona limited liability company,
and
DANIEL C. BUTTERFIELD, an unmarried
man,
Respondents.

DOCKET NO. S-21043A-18-0069

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY
EACH RESPONDENT HAS 20 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 AZ Investment Property Experts, LLC and Daniel C. Butterfield are engaging in or are 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 that the public welfare requires immediate action.

The Division also alleges that Daniel C. Butterfield is a person controlling AZ Investment Property Experts, LLC within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as AZ Investment Property Experts, LLC for its violations of the antifraud provisions of the Securities Act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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. AZ Investment Property Experts, LLC is a limited liability company organized under the laws of the state of Arizona on March 3, 2010. IPX is a trade name used by AZ Investment Property Experts, LLC (“IPX”). IPX has not been registered by the Commission as a securities salesman or dealer, and none of IPX’s securities have been registered by the Commission.

3. Daniel C. Butterfield (“Butterfield”) has been an Arizona resident since approximately 2006. Butterfield has been an unmarried man since February 16, 2018. Butterfield has not been registered by the Commission as a securities salesman or dealer.

4. IPX is a member-managed company, and since December 11, 2012, the majority of IPX’s member units have been held by other member-managed companies of which Butterfield is the sole member.

5. Butterfield has had control of IPX since December 11, 2012.

6. IPX and Butterfield may be referred to collectively as “Respondents.”

III.

FACTS

7. IPX is a real estate investment company that has been located in Arizona since its organization. IPX buys and resells residential real estate, sometimes after renovating the real estate. Since at least December 2016, IPX’s business has expanded to include condominium development in Mexico. IPX’s only active condominium development project is the Esmeralda Resort

1 (“Esmeralda Project”), a condominium tower resort project under construction in Puerto Peñasco,
2 Mexico, also known as Rocky Point.

3 8. To fund the Esmeralda Project, on approximately November 28, 2016, IPX began
4 offering promissory notes featuring 15% annual interest paid monthly with a one-year term (“Note”).
5 IPX has raised over \$23 million with its Note offering from over 130 investors, most of whom are
6 Arizona investors.

7 9. All funding for the Esmeralda Project comes from IPX. However, IPX has no
8 ownership interest in the Esmeralda Project. The Esmeralda Project real estate is owned by a Mexican
9 corporation named Sandy Beach Esmeralda Resort, S. de R.L. de C.V. This Mexican corporation is
10 owned by Sandy Beach Esmeralda Development, LLC, an Arizona limited liability company owned
11 by Butterfield.

12 10. IPX does not provide Note offerees with an offering memorandum, accredited
13 investor questionnaire, subscription agreement, or financial statements.

14 11. Each investor’s Note consists of several pages of legal terms, several representations
15 purportedly made by the investor, and a signature line for the investor. Although IPX advertises the
16 Note offering as being related to the Esmeralda Project, the terms of the Notes actually allow IPX to
17 use the proceeds of the Note offering “... in any legal fashion to further its business purpose”
18 However, some investors believed they were investing in a condominium development project.
19 Butterfield executed most or all of the Notes on behalf of IPX. The Notes do not include any
20 disclosure of the risks of the Note investment.

21 12. Each note includes a representation purportedly made by the investor that the investor
22 is an accredited investor and will submit to reasonable IPX requests for further assurances of their
23 accredited investor status. However, some IPX investors were not accredited investors at the time of
24 their Note investment. In many cases, IPX did not take any steps to verify or even ask whether an
25 investor was an accredited investor at the time of their Note investment.

26

IPX's Note Promotion Efforts

1
2 13. IPX promotes the Note offering through three channels. First, IPX runs radio
3 advertisements that promote the Note offering ("Radio Ads") on a Phoenix-area radio station.
4 Second, Butterfield promotes the Note offering on a radio show he hosts on Sundays at 10:00 a.m.
5 ("Radio Show") on a Phoenix-area radio station. Third, IPX holds seminars to promote the Note
6 offering.

7 14. IPX runs several versions of its Radio Ads in 15 and 60 second durations. The Radio
8 Ads are read by Butterfield. Butterfield states in one Radio Ad for the Note offering that IPX is
9 "rocking the financial world with big returns, high yields, and shrewd real estate investments" and
10 that IPX is investing in "what we believe is the best opportunity for returns. It's Rocky Point,
11 Mexico." Butterfield adds, "They're building a home port for cruise ships, and that means explosive
12 growth," and he invites listeners to attend a free workshop.

13 15. In a second IPX Radio Ad for the Note offering, Butterfield states that because of
14 high ranking government officials, "... agreeing to promote and support the home port for cruise
15 ships, there is a huge appreciation upside." Butterfield also states, "15%, a secure retirement, and a
16 lifestyle that you've dreamed of," and he invites listeners to attend a free workshop.

17 16. In a third IPX Radio Ad promoting the Note offering and the sale of Esmeralda Project
18 condominiums, Butterfield states, "Make a million dollars in three years; it's as easy as 1-2-3."

19 17. The IPX Radio Show that Butterfield hosts is an IPX marketing tool. IPX pays the
20 radio station to air the Radio Show, at a cost of approximately \$30,000 per month. IPX considers
21 this cost to be a marketing expense. The Radio Show addresses various real estate investment
22 opportunities that IPX offers, including the Notes for the Esmeralda Project. Upcoming IPX seminars
23 are sometimes discussed on the Radio Show. Butterfield has hosted the IPX Radio Show since 2012.

24 18. A recent airing of the Radio Show on November 26, 2017, focused primarily on the
25 Esmeralda Project and the Note offering. Butterfield invited listeners to come to a "client
26 appreciation event" to meet current Note investors and learn about the Esmeralda Project. Butterfield

1 also said, “every investor I’ve ever talked to, they’ve always said that they feel special to be a part
2 of something that’s gonna be global news, and they now realize what I’ve been saying is true.”
3 Butterfield also touted his own sincerity, saying, “With me you always know you’re going to get the
4 honest truth of what I feel, how I feel. I try to use tact, most of the time, but I always tell it how it is,
5 and I always tell it straight” Butterfield later added, “People get in their own way ... and they
6 prohibit themselves from being successful. That’s what it is, lack of confidence.” Butterfield also
7 predicted that the investors in the Note offering, “are going to feel the wealth.” Throughout the show,
8 Butterfield invited listeners to call IPX to learn more about the Esmeralda Project and the Note
9 offering or to RSVP for events. No investment risks were disclosed during this radio show.

10 19. IPX holds frequent seminars presented by Butterfield to promote the Note offering
11 and solicit investments. IPX held at least six such seminars covering the Note offering in 2017. Each
12 of these IPX seminars emphasized the importance of the expected construction of a cruise ship port
13 at Puerto Peñasco. None of the presentation slides used at these seminars disclosed any risks of the
14 Note investment. The only mention of risks in the presentation slides was that in four of the seminars
15 IPX downplayed risk, stating, “Our professionals are experienced in all aspects of real estate
16 investing, and understand how to limit risks while maximizing profits.” During at least five of the
17 2017 seminars promoting the Note offering, IPX offered to help roll over investors’ IRA or 401(k)
18 accounts to fund their investment. Butterfield’s experience in the real estate industry is a theme of
19 most IPX seminars.

20 20. A January 18, 2018, IPX seminar for the Note offering presented by Butterfield was
21 attended by approximately forty people. At this seminar, Butterfield stated that he had close ties to
22 high ranking government officials who support the Esmeralda Project. Butterfield also solicited
23 investments in the Note offering and invited attendees to have one-on-one meetings with the sales
24 staff present at the seminar. No investment risks were discussed at the January 18, 2018, IPX seminar.

25 21. Butterfield conducted a recent one-on-one meeting with a Note offeree in early 2018.
26 During this meeting, Butterfield stated, “One thing I’ve learned about me—extremely transparent,

1 to the point of almost a fault.” During the meeting, Butterfield also discussed his plans to expand the
2 scope of the Note offering by presenting monthly seminars in other states and syndicating the IPX
3 Radio Show in those states. The only mentions of risk at this meeting were a statement by Butterfield
4 that it would be a problem if monthly investment totals in the Note offering decreased and a statement
5 by Butterfield that, “the most risk, in my perspective, was on day one when we bought the resort . . .”

6 **Omissions and Misrepresentations**

7 22. The Note investment is subject to several significant risks (“Risks”) including
8 increased risks related to foreign real estate investments. Although Butterfield and IPX tout the
9 positive effects that construction of a cruise ship port would have on the Esmeralda Project, there is
10 a risk that construction of the cruise ship port could be significantly delayed or cancelled due to
11 numerous factors such as economic disruption, mismanagement, and governmental budget priorities.
12 For example, the Arizona Republic reported on December 3, 2017, that the Puerto Peñasco cruise
13 ship port project had run out of money two years earlier and has been “beset with spending issues
14 and mismanagement.” Also, although Butterfield and IPX tout the benefits of high ranking
15 government officials supporting the construction of the cruise ship port and the Esmeralda Project
16 itself, reliance on such support is subject to the risk of changes in the political environment.

17 23. IPX and Butterfield failed to disclose some or all of the Risks of investing in the Notes
18 to at least eight Note investors or offerees. IPX misrepresented to at least one Note investor that the
19 Note investment involved no risk.

20 24. IPX and Butterfield failed to disclose to at least one Note investor or offeree that IPX
21 has no ownership interest in the Esmeralda Project. No matter how much equity exists in the
22 Esmeralda Project, if IPX defaults on the Notes, the Note investors will have no contractual recourse
23 against the entity that actually owns the Esmeralda Project.

24 25. In approximately July or August 2015, IPX failed to make timely monthly interest
25 payments due on several IPX interest payment obligations. For several months following the missed
26 payments, IPX made monthly interest payments on these obligations at only one-third of the interest

1 rate due. These missed and partial payments were caused by a disruption to IPX's business model at
2 the time.

3 26. IPX and Butterfield failed to disclose to at least one Note investor or offeree that IPX
4 had previously failed to make timely and complete monthly interests payments due on several IPX
5 interest payment obligations.

6 27. On July 22, 2004, the Minnesota Department of Commerce issued an order
7 ("Minnesota Order") revoking Butterfield's Minnesota real estate salesperson license and
8 permanently barring him from engaging in residential mortgage origination or servicing. The
9 Minnesota Department of Commerce alleged in the order that Butterfield had engaged in fraud in
10 connection with several real estate transactions, including equity stripping and a breach of his
11 fiduciary duties. Butterfield denied the allegations but consented to entry of the Minnesota Order.

12 28. IPX and Butterfield failed to disclose to at least eleven Note investors or offerees the
13 revocation of his real estate salesperson license with his consent based on allegations of fraud.

14 29. Each of these omissions would be material to a reasonable investor. Each of these
15 omissions made another IPX or Butterfield statement misleading, including statements about
16 repayment of the Notes, Butterfield's transparency, and Butterfield's real estate experience.

17 **IV.**

18 **VIOLATION OF A.R.S. § 44-1841**

19 **(Offer and Sale of Unregistered Securities)**

20 30. From on or about November 28, 2016, Respondents have been offering or selling
21 securities in the form of notes, within or from Arizona.

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

24 32. This conduct violates A.R.S. § 44-1841.

25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

33. Respondents are offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

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

VI.

VIOLATION OF A.R.S. § 44-1991

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

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

a) Respondents failed to disclose to at least eight Note investors or offerees some or all of the Risks of investing in the Notes;

b) IPX misrepresented to at least one Note investor that the Note investment involved no risk;

c) Respondents failed to disclose to at least one Note investor or offeree that IPX has no ownership interest in the Esmeralda Project;

d) Respondents failed to disclose to at least one Note investor or offeree that IPX had previously failed to make timely and complete monthly interests payments due on several IPX interest payment obligations; and

e) Respondents failed to disclose the revocation of his real estate salesperson license with his consent based on allegations of fraud to at least eleven Note investors or offerees.

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

4 Persons with a disability may request a reasonable accommodation such as a sign language
5 interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon,
6 ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests
7 should be made as early as possible to allow time to arrange the accommodation.

8 **XI.**

9 **ANSWER REQUIREMENT**

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

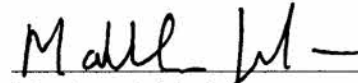
16 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
17 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
18 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
19 addressed to Paul Kitchin.

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

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

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

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 27th day of March,
4 2018.

5 
6 _____
7 Matthew J. Neubert
8 Director of Securities
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26