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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF:

DAVID R. KRIZMAN
3620 N. Lynford Place
Tucson, AZ 85749

DOCKET NO. S-03486A-02-0000

DECISION NO. 65772

OPINION AND ORDER

DATE OF PRE-HEARING CONFERENCE: July 1, 2002
DATE OF HEARING: December 11, 2002
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Phillip A. Hofling, Special Assistant Attorney General, on behalf of the Securities Division of the Arizona Corporation Commission

BY THE COMMISSION:

On May 31, 2002, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against David R. Krizman ("Respondent") in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of viatical settlements and/or investment contracts.

Respondent Krizman was duly served with a copy of the Notice.

On June 18, 2002, Walter L. Baumgardner, a Michigan attorney, filed a request for hearing for the Respondent.

On June 25, 2002, by Procedural Order, a pre-hearing conference was scheduled for July 11, 2002 and Mr. Baumgardner was directed to comply with Rule 33(d) of the Arizona Supreme Court.

On July 11, 2002, at the pre-hearing conference, counsel for the Division was present. Neither Respondent nor Respondent's counsel appeared. Counsel for the Division indicated that settlement

1 negotiations for a Consent Order were being conducted and requested a hearing be scheduled in 60 to 90
2 days if a Consent Order was not approved in the interim.

3 On July 12, 2002, by Procedural Order, a hearing was scheduled for October 1, 2002.

4 On September 27, 2002, the Division filed a Motion to Continue the proceeding for an additional
5 60 days as the parties attempted to finalize a Consent Order to be approved by the Commission.

6 On September 30, 2002, by Procedural Order, the hearing was continued to December 11, 2002
7 pending approval of a Consent Order by the Commission.

8 On December 4, 2002, the Division filed its List of Witnesses and Documentary Evidence.
9 Respondent did not file a List of Witnesses and Documentary Evidence.

10 On December 11, 2002, a full public hearing was commenced before a duly authorized
11 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Counsel for the
12 Division appeared. Neither Respondent nor Respondent's counsel appeared at the hearing. During the
13 course of the proceeding, testimony was taken from two investor witnesses, a Division special
14 investigator and a Division senior financial institution examiner. Nineteen exhibits were admitted
15 into evidence.

16 On January 27, 2003, the Division submitted its Post-Hearing Memorandum.

17 * * * * *

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21
22 1. Respondent David R. Krizman, whose last known address is 3620 N. Lynford Place,
23 Tucson, Arizona 85749, was a securities salesman registered in Arizona from August 21, 1997 through
24 March 1, 2002 with SunAmerica Securities, Inc. ("SunAmerica").

25 2. On May 31, 2002, the Division filed a Notice against David R. Krizman alleging
26 multiple violations of the Act in connection with the offer and sale of securities in the form of viatical
27 settlements and/or investment contracts.

28 3. Respondent was duly served and requested a hearing.

1 4. Pursuant to a Division subpoena, Respondent Krizman appeared at the Division's offices
2 and testified in an examination under oath ("EUO") on May 1, 2002.

3 5. During his EUO, Respondent Krizman described how he did business as an entity called
4 "Advanced Funding" to keep his viatical settlement sales apart from and unknown to his supervisors at
5 SunAmerica.

6 6. On May 1, 1998, Respondent Krizman, dba Advanced Funding, entered into a Sales
7 Agent Agreement (the "Agent Agreement") with The Alpha Capital Group, LLC ("Alpha"), 104 E. 40th
8 Street, Suite 703, New York, NY 10016, for the purpose of offering and selling viatical settlement
9 contracts offered by Alpha.

10 7. The Agent Agreement between Krizman and Alpha provided for a commission payment
11 to Mr. Krizman of 15% of the amount of money raised from the sale of each contestable viatical policy.
12 If the sale was for a non-contestable policy, then the commission rate decreased to 8%.

13 8. During his EUO, Mr. Krizman furnished documents which showed that he sold Alpha
14 viatical contracts to six Arizona residents. He provided four copies of Agency Agreements entered into
15 between Respondent Krizman as the Agent of Alpha with four of his Arizona clients, Lupe Cardenas,
16 Elaine Haber (formerly Green), Gloria Martinez and Joan Towner. These Agency Agreements were
17 used for the purchase of contestable Alpha viatical contracts.

18 9. Additional documents provided by Respondent Krizman during his EUO establish that
19 a fifth Arizona resident, Steven Weinstein, purchased three contestable Alpha viatical contracts from
20 Respondent Krizman.

21 10. A sixth Arizona investor, Russell Le Blanc, filed a complaint with the Division
22 concerning his purchase of five contestable Alpha viatical contracts through Respondent Krizman.
23 He included a copy of an Agency Agreement with his complaint reflecting his viatical investment.

24 11. The record establishes that Respondent Krizman sold Alpha viatical contracts to the six
25 above-identified Arizona residents who invested a total of \$439,715.62 while he was employed by
26 SunAmerica as a registered securities salesman as follows:
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28

<u>Investor</u>	<u>Date of Agency Agreement</u>	<u>Amount Invested</u>
Russell E. Le Blanc	May 6, 1998	\$184,000.00
Lupe S. Cardenas	May 7, 1998	\$58,715.62
Steven Weinstein	June 9, 1998	\$97,000.00
Gloria M. Martinez	June 15, 1998	\$35,000.00
Joan Towner	May 11, 1998	\$20,000.00
Elaine B. Haber (formerly Elaine B. Green Survivors Trust)	August 25, 1998	\$45,000.00

12. Division special investigator Robert Jordon testified that Alpha was not registered with the Division and that Alpha's viatical contracts sold to the Arizona investors were not registered as securities with the Division and that they were not exempt from registration.

13. Documents provided by Respondent Krizman during his EUO establish that he was paid commissions totaling \$31,339.36 for sale of the Alpha viatical contracts to investors Cardenas, Martinez, Towner and Weinstein.

14. It appears that Respondent Krizman would also have earned an additional \$33,225.00 in commissions from the sale of contestable Alpha viatical contracts to investors Haber and Le Blanc based on Respondent Krizman's EUO testimony wherein he stated he earned a 15% commission on his contestable viatical sales.

15. Mrs. Lupe Cardenas testified telephonically from Tucson that she is a 74 year old retired secretary/bookkeeper with a high school degree and one year of commercial training.

16. Mrs. Cardenas was an inexperienced investor when she first met Respondent Krizman. Her investment experience had been limited to bank certificates of deposit. She met Respondent Krizman, who at the time was selling stocks and bonds for SunAmerica at her bank and began investing in SunAmerica offerings.

17. According to Mrs. Cardenas, her stock investments were declining in value and she asked Respondent Krizman if he could sell her a safer investment.

1 18. On May 7, 1998, Respondent Krizman met with Mrs. Cardenas at her home and
2 discussed Alpha's viatical investment program. At the end of that visit she signed the Agency
3 Agreement investing \$58,715.02.

4 19. Mrs. Cardenas relied solely on Respondent Krizman's expertise and her trust in him.
5 Due to her trust in Mr. Krizman, she believed the Alpha viatical contract was not risky and that she
6 could not lose her investment because she believed that she was buying life insurance.

7 20. Mrs. Cardenas did not recall hearing the term viatical and testified she does not know
8 what a viatical is or how it works.

9 21. Mrs. Cardenas panicked after she invested when she learned that she invested in
10 insurance policies insuring the lives of persons with AIDS but Respondent Krizman advised her to set
11 her Alpha investment aside and to not worry further.

12 22. When Mrs. Cardenas invested, she also did not understand that the insured had to die
13 before she could receive the return of her investment.

14 23. Since Mrs. Cardenas was 70 at the time she invested, she had to have access to this
15 money within two years because these were IRA funds upon which she would need to make
16 mandatory withdrawals and pay taxes. She again relied on Respondent Krizman's representations to
17 her that liquidating her investment would not be a problem and that she could withdraw her money
18 within two years.

19 24. Respondent Krizman failed to disclose any potential investment risks associated with
20 the Alpha viatical to Mrs. Cardenas such as how the insured/viator's life expectancy might affect her
21 investment return. Additionally, Respondent Krizman never explained the difference between a
22 contestable and uncontestable policy.

23 25. At the hearing, Mrs. Cardenas testified that her 1998 Alpha viatical contract has not
24 yet matured or paid her any return.

25 26. Mrs. Elaine Haber (formerly Green), a 68-year old college-educated widow who has
26 never been employed, also testified telephonically from Tucson about her Alpha viatical investment
27 with Respondent Krizman.
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1 27. Mrs. Haber described herself as an inexperienced investor with limited investment
2 experience. Prior to her dealings with Respondent Krizman, Mrs. Haber's investment experience
3 consisted of only slight knowledge of the investments made previously by her husband.

4 28. After Mrs. Haber's husband died in 1998, her only other investment which she made
5 on her own besides the Alpha viatical contract involved the purchase of shares in an Eaton Vance
6 mutual fund sold to her by Respondent Krizman.

7 29. On August 25, 1998, Mrs. Haber invested \$45,000 in an Alpha viatical contract with
8 Mr. Krizman.

9 30. Although Mrs. Haber testified that a number of factors entered into her decision to
10 invest in the Alpha viatical contract, none of them were relevant to making a sound investment
11 decision. Mrs. Haber trusted Respondent Krizman and her trust was heightened by the fact that she
12 was in a vulnerable state of mind due to her husband's death at the time of her investment.

13 31. Mrs. Haber was led to believe by Mr. Krizman that she would double her money and
14 that if her investment in a viatical contract did not pay a return during her lifetime, her children would
15 receive its benefits.

16 32. Although Mrs. Haber was also led to believe that she could sell her viatical investment
17 at any time, after she read a newspaper article stating viaticals were poor investments, she was unable
18 to sell it.

19 33. Respondent Krizman did not disclose any potential risks associated with the Alpha
20 viatical investment to Mrs. Haber including any risks associated with purchasing a contestable policy.
21 In fact, Mrs. Haber could not recall any discussion about the fact that she was purchasing a
22 contestable policy.

23 34. Mrs. Haber testified that she believes the reason her Alpha viatical contracts have not
24 paid her a return is because Alpha went bankrupt.

25 35. Mr. Michael Donovan, a Division senior financial institution examiner for five and
26 one-half years, testified on general securities practices. Mr. Donovan has twenty-two years
27 experience in the securities industry including sixteen and one-half years as a registered securities
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1 salesman. He has received securities training from Merrill Lynch and the Division.

2 36. Mr. Donovan testified that he is familiar with the National Association of Securities
3 Dealers (“NASD”) Conduct Rules (“Conduct Rules”) and in particular the Conduct Rules governing
4 private securities transactions and outside business activities.

5 37. As a NASD member firm, the Conduct Rules apply to SunAmerica and Respondent
6 Krizman.

7 38. The Conduct Rules prohibit a salesman from selling products that are not approved by
8 the salesman’s broker dealer, and a securities salesman is required to notify and receive approval
9 from his broker dealer prior to selling any investment products not approved by the firm.

10 39. When a salesman sells an unapproved product, the practice is known as “selling
11 away”; and Arizona prohibits selling away under A.R.S. §44-1962(10) and A.A.C. R14-4-130(7).

12 40. SunAmerica’s sales practice manual in effect at the time Respondent Krizman effected
13 the Alpha viatical sales contained sections titled “Prohibited Sales and Business Practices”, “Outside
14 Business Activities”, and “Private Securities Transactions” that clearly prohibited selling investment
15 products, including alternative investment products, that were not approved for sale, and accepting
16 compensation directly or indirectly from other than SunAmerica in connection with any securities
17 transactions.

18 41. During his EUO, Respondent Krizman testified that he was familiar with the topics
19 covered by SunAmerica’s sales practices manual and that he was aware that selling away was
20 prohibited.

21 42. The Alpha viatical contracts sold by Mr. Krizman were not an investment product
22 approved for sale by SunAmerica’s salesmen.

23 43. From the NASD’s Central Registration Database (“CRD”), Mr. Donovan noted that an
24 Alpha viatical investor, Russell Le Blanc, filed a complaint with SunAmerica on February 15, 2002
25 against Respondent Krizman concerning Mr. Le Blanc’s viatical purchases. Subsequently, according
26 to the CRD records, SunAmerica reported that it conducted an internal review on February 25, 2002
27 into a customer complaint and, as a result of that review, it terminated Respondent Krizman for
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1 selling a product that was not on the approved list and because the requisite disclosures had not been
2 submitted for review and approval.

3 44. Since July 18, 2000, a viatical settlement has been defined as a security under the Act.
4 Subsequent to that date, the Arizona Court of Appeals in Siporin v. Carrington, 23 P.3d. 92 (April 19,
5 2001), concluded that viatical settlements sold to an Arizona investor in 1997 fell within the
6 definition of an investment contract and were thus, securities under the Act. Although this case
7 conflicts with a decision by the federal Court of Appeals for the District of Columbia in Sec. & Exch.
8 Comm'n v. Life Partners, Inc., 87 F.3d 536 (D.C. Cir.) *pet. for reh. en banc denied*, 102 F.3d 587
9 (D.C. Cir. 1996), the Siporin court clearly stated that reliance on Life Partners was a "voluntarily
10 assumed business risk". Siporin, 23 P.3d. 92, 99.

11 45. We believe that the Life Partners case is not binding in Arizona and we believe
12 Arizona investors are better and more appropriately protected by the Arizona decision. The fact that
13 there had not been an amendment to the Act to define a viatical settlement as a security prior to the
14 Alpha viatical sales by Respondent Krizman does not preclude our finding that the Alpha viatical
15 contracts were securities as investment contracts subject to regulation under the Act and that
16 Respondent Krizman sold securities that were not registered with the Division or exempt from
17 registration.

18 46. With respect to the allegations by the Division that Respondent Krizman engaged in
19 fraud in the sale of securities, based on the record, Respondent Krizman violated A.R.S. §44-
20 1991(A)(2) by misrepresenting to investors that they would double their money, by failing to disclose
21 material facts regarding risks that could substantially impact the return on the investment such as that
22 contestable policies were subject to forfeiture with the potential loss of the entire investment or that
23 the longer the viator/insured lived, the lower the rate of return. Additionally, Respondent Krizman
24 misrepresented to investors the following: that the Alpha viatical contracts were entirely safe high-
25 yield investments; and that investors could readily liquidate their Alpha viatical contracts within two
26 years, when there was no public market for these investments. Respondent Krizman also failed to
27 disclose to investors the difference between contestable policies and non-contestable policies.
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1 §44-1841 the sum of \$18,000; for the violations of A.R.S. §44-1991(A)(2) the sum of \$30,000; and for
2 the violations of A.R.S. §44-1962(10), A.A.C. R14-4-130(7) the sum of \$18,000.


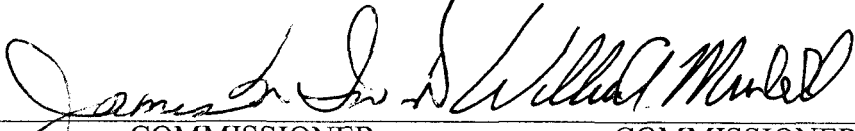
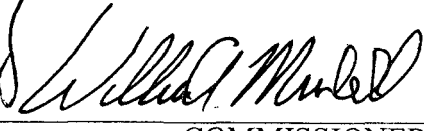
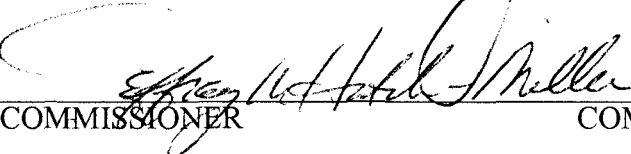

3 IT IS FURTHER ORDERED that the administrative penalties hereinabove shall be made
4 payable to the State Treasurer for deposit in the general fund for the State of Arizona.

5 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear
6 interest at the rate of 10 percent per year for any outstanding balance after 60 days from the effective
7 date of this Decision.

8 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
9 A.R.S. §44-1962, Respondent Krizman's securities salesman's registration, be and is hereby, revoked.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12			
13		CHAIRMAN	COMMISSIONER
14			COMMISSIONER
15			
16	COMMISSIONER	COMMISSIONER	

17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this 24th day of March, 2003.

22 
BRIAN C. McNEIL
EXECUTIVE SECRETARY

23 DISSENT _____
24 DISSENT _____
25 MES:mlj

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1 SERVICE LIST FOR: DAVID R. KRIZMAN

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