



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DEC 05 2005

DOCKETED BY *CAF*

In the matter of:
MICHAEL R. BROOKS, CRD#2086694,
and MARIA BROOKS, husband and wife,
3169 Point White Drive
Bainbridge Island, WA 98110
Respondents.

DOCKET NO. S-20393A-05-0521

DECISION NO. 68315

**ORDER TO CEASE AND DESIST, FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES, AND OF REVOCATION**

On July 22, 2005, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order To Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice") against Respondents MICHAEL R. BROOKS ("BROOKS") and MARIA BROOKS (collectively, "RESPONDENTS"), alleging violations of the Arizona Securities Act (the "Act"). The Notice specified that RESPONDENTS would be afforded an opportunity for an administrative hearing upon written request filed with the Commission's Docket Control within ten (10) days after receipt of the Notice, in accordance with A.A.C. Rule R14-4-306(B).

After the Division's attempts to locate and serve RESPONDENTS by other methods, including certified mail to their last known address, proved unsuccessful, RESPONDENTS were served by publication, pursuant to A.A.C. Rule R14-4-303(H). The Division has published a statement regarding the administrative proceedings at least once a week for four consecutive weeks

1 in Maricopa County, in the "Arizona Business Gazette," on September 29, 2005; October 6, 2005;
2 October 13, 2005; and October 20, 2005. The Division has also published statements regarding
3 the administrative proceedings at least once a week for four consecutive weeks in the counties of
4 RESPONDENTS' last known residences: King County, in the "King County Journal," on
5 September 26, 2005; October 3, 2005; October 10, 2005; and October 17, 2005; and Kitsap
6 County, in the "Bainbridge Review," on September 24, 2005; October 1, 2005; October 8, 2005;
7 and October 15, 2005.

8 Service of process of the Notice as to RESPONDENTS is complete. RESPONDENTS failed
9 to request an administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. §
10 44-1972 and A.A.C. Rule R14-4-306. RESPONDENTS failed to file an Answer within 30 days of
11 service of the Notice, pursuant to A.A.C. Rule R14-4-305. Upon information and belief,
12 RESPONDENTS are not represented by counsel.
13

14 **I.**

15 **FINDINGS OF FACT**

16 1. BROOKS, CRD# 2086694, is and was at all pertinent times a registered securities
17 salesman in Arizona, since April 26, 1994. BROOKS' last known address is 3169 Point White
18 Drive, Bainbridge Island, Washington, 98110. BROOKS' last known post office box address is
19 P.O. Box 4477, Seattle, Washington 98194. At all times pertinent to this action, BROOKS was
20 registered in Arizona in association with Fox & Company Investments, Inc. ("Fox") from April
21 1994 to May 26, 2004, when he was permitted to resign. BROOKS is currently not affiliated with
22 any securities dealer.

23 2. MARIA BROOKS was at all relevant times the spouse of Respondent BROOKS.
24 MARIA BROOKS is joined in this action under A.R S. § 44-2031(C) solely for purposes of
25 determining the liability of the marital community.
26

1 3. At all relevant times, BROOKS and MARIA BROOKS (“RESPONDENTS”) were
2 acting for their own benefit and for the benefit or in furtherance of the marital community.

3 4. On or about November 30, 2001, BROOKS contacted a customer who resided in
4 Scottsdale, Arizona, a client of Fox and a personal friend of BROOKS, to recommend a “hot” new
5 investment opportunity for her in a Seattle-area company.

6 5. BROOKS was the securities salesman for the Arizona customer’s individual
7 retirement account (“IRA”) at Fox, and had known her for approximately ten years. As of October
8 31, 2001, the client’s IRA was worth approximately \$10,268. Approximately \$9,834 of her IRA
9 was held in a high yield bond fund, and the remainder was in a money market fund.

10 6. BROOKS told his Arizona customer that the investment was not offered through
11 Fox, but that he would personally deliver her investment to the promoters. BROOKS advised his
12 customer to invest quickly because the deadline for making an investment was rapidly
13 approaching. When the customer expressed concern about whether she would incur a tax penalty
14 for withdrawing money from her IRA, BROOKS reassured her that the new investment would also
15 be tax deferred. Based upon BROOKS’ representations and the trust the Arizona customer placed
16 in him, she agreed to make the recommended investment.

17 7. On or about November 30, 2001, BROOKS sent a facsimile of an authorization
18 form for the customer to sign. The form authorized an early withdrawal from her IRA. That same
19 day, BROOKS sold the customer’s shares of the high yield bond fund. The trade confirmation
20 noted that the trade was unsolicited.

21 8. On or about December 4, 2001, Fox, through its clearing broker, wired \$9,698.29 to
22 the Arizona customer’s personal checking account at Wells Fargo Bank. That same day, the
23 customer deposited \$8,740 directly into BROOKS’ Bank of America personal checking account,
24 pursuant to his instructions.

25 9. That same day, BROOKS withdrew \$8,500 from his personal checking account at
26 Bank of America in the form of a cashier’s check made payable to the Department of the Treasury.

1 10. The Arizona customer made numerous requests of BROOKS to provide her with
2 proof of how her \$8,740 was invested. To date, BROOKS provided the customer only a one-page
3 document for her 2001 tax return that showed her name, an account number and an account value
4 of \$10,000. The tax document did not reveal where her purported investment was held.

5 11. The customer became concerned because she was not receiving quarterly statements
6 showing that her investment was growing. BROOKS told the customer that her money was
7 invested in an energy company.

8 12. Beginning in at least January 2004, the Arizona customer was no longer able to
9 contact BROOKS because his telephone was disconnected. On or about February 3, 2004, the
10 customer reported the loss of her investment to the Kirkland, Washington police department, which
11 referred her to the State of Washington Department of Financial Institutions.

12 13. On March 1, 2005, the State of Washington Department of Financial Institutions,
13 Office of the Director, issued a Final Order against BROOKS, Order No. S-03-176-05-FO03,
14 permanently revoking BROOKS' securities salesperson's license in the state of Washington,
15 finding violations of the registration and anti-fraud provisions of the Washington Securities Act,
16 and ordering penalties in the amount of \$15,000, and costs in the amount of \$7,800, based upon
17 BROOKS' dealings with three customers, including the Arizona resident.

18 14. On May 25, 2005, the National Association of Securities Dealers ("NASD"),
19 Department of Enforcement issued a Default Decision against BROOKS, barring him from
20 associating with any NASD member in any capacity for misuse and conversion of customer funds
21 and for failure to provide requested information. An NASD Hearing Officer ordered BROOKS to
22 pay restitution in the amount of \$8,740 to the Arizona customer, plus interest. BROOKS has failed
23 to pay any restitution pursuant to the NASD Order.

24 15. BROOKS misrepresented the use of the Arizona customer's investment funds.

25 16. BROOKS engaged in unauthorized transactions in a client's account.

26 17. BROOKS misappropriated investment funds.

1 18. BROOKS is subject to an order of an administrative tribunal, an SRO or the SEC
2 denying, suspending or revoking membership or registration as a broker or dealer in securities or
3 an investment adviser or investment adviser representative for at least six months, pursuant to
4 A.R.S. § 44-1962(A)(8).

5 **II.**

6 **CONCLUSIONS OF LAW**

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

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

11 3. BROOKS violated A.R.S. § 44-1991 by offering or selling securities within or from
12 Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or
13 misleading omissions of material facts, and (c) engaging in transactions, practices or courses of
14 business which operate or would operate as a fraud or deceit.

15 4. BROOKS has engaged in dishonest or unethical practices in the securities industry,
16 pursuant to A.R.S. § 44-1962(A)(10), including:

- 17 a. Executing a transaction on behalf of a customer without authority to do so,
18 pursuant to A.A.C. Rule R14-4-130(6);
- 19 b. Employing, in connection with the purchase or sale of a security, a manipulative
20 or deceptive device or contrivance, pursuant to A.A.C. Rule R14-4-130(14); and
- 21 c. Making unauthorized use of securities or funds of a customer or converting
22 customer securities or funds for personal benefit, pursuant to A.A.C. Rule R14-4-
23 130(16).

24 5. BROOKS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
25 2032 and 44-1962.

1 6. BROOKS' conduct is grounds for a restitution order pursuant to A.R.S. §§ 44-2032 and
2 44-1962.

3 7. BROOKS' conduct is grounds for administrative penalties under A.R.S. §§ 44-2036
4 and 44-1962.

5 8. BROOKS' conduct is grounds to revoke BROOKS's registration as a securities salesman
6 with the Commission pursuant to A.R.S. § 44-1962.

7 **III.**

8 **ORDER**

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

12 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that BROOKS, his agents,
13 employees, successors and assigns, permanently cease and desist from violating the Securities Act.
14 Respondent shall not sell any securities within or from Arizona without being registered in
15 Arizona as a dealer or salesman, or exempt from such registration. Respondent shall not sell
16 securities within or from Arizona unless the securities are registered in Arizona or exempt from
17 registration. Respondent shall not transact business in Arizona as an investment adviser or an
18 investment adviser representative unless licensed in Arizona or exempt from licensure.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that
20 RESPONDENTS shall pay restitution to investors shown on the records of the Commission in the
21 amount of \$8,740, plus interest at the rate of 10% per annum from the date of the investment,
22 pursuant to A.A.C. Rule R14-4-308. Payment shall be made by cashier's check or money order
23 payable to the "State of Arizona" to be placed in an interest-bearing account maintained and
24 controlled by the Commission. The Commission shall disburse the funds on a pro rata basis to
25 investors. Any funds that the Commission is unable to disburse shall be transferred to the general
26

1 fund of the state of Arizona. If Respondent does not comply with this order of restitution, any
2 outstanding balance shall be in default and shall be immediately due and payable.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that
4 RESPONDENTS shall pay administrative penalties in the amount of \$15,000. Payment shall be
5 made in full by cashier's check or money order on the date of this Order, payable to the "State of
6 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the
7 date of this Order until paid in full.

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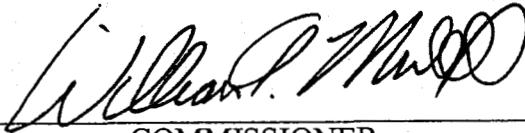
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1 IT IS FURTHER ORDERED that BROOKS's registration as a securities salesman is
2 revoked pursuant to A.R.S. § 44-1962.

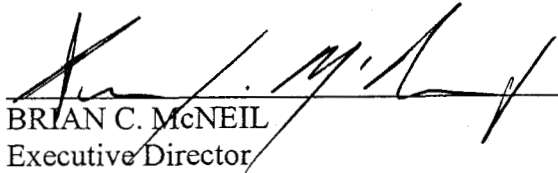
3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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6  
7 CHAIRMAN COMMISSIONER

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9  
10 COMMISSIONER COMMISSIONER COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C.
12 McNEIL, Executive Director of the Arizona
13 Corporation Commission, have hereunto set my
14 hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the
16 City of Phoenix, this 5th day of
17 December, 2005.

18 
19 BRIAN C. McNEIL
20 Executive Director

21 _____
22 DISSENT

23 _____
24 DISSENT

25 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
26 to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov

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