

아님, 그는 것은 것은 것을 것을 가지 않는 것이 없는데. 같은 것은 것은 것을	
<u>COMMISSIONERS</u>	Arizona Corporation Commission DOCKETED
MIKE GLEASON, Chairman WILLIAM A. MUNDELL	027 - 3 2008
JEFF HATCH-MILLER KRISTIN K. MAYES GARY PIERCE	DOCKETED BY
In the matter of:) DOCKET NO. S-20607A-08-0381
CAG CAPITAL, INC., an Arizona) corporation, doing business as GLENDALE)) LE) DECISION NO. <u>70546</u>
CAR CONNECTION, an Arizona registe trade name; KIM K. COLLINS, a single man,	 ORDER TO CEASE AND DESIST, ORDER OF RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY:
Respondents.) CAG CAPITAL, INC., an Arizona corporation
	and
) KIM K. COLLINS, single man
Respondents CAG CAPITAL, IN	C. and KIM K. COLLINS elect to permanently waive a
right to a hearing and appeal under Artic	cles 11 and 12 of the Securities Act of Arizona, A.R.S.
44-1801 et seq. ("Securities Act") with	n respect to this Order To Cease And Desist, Order
Restitution, Order for Administrative P	enalties ("Order") and Consent to Same. Responder
CAG CAPITAL, INC. and KIM K. CO	LLINS admit the jurisdiction of the Arizona Corporation
Commission ("Commission"); neither a	dmit nor deny the Findings of Fact and Conclusions
Law contained in this Order; and consent	to the entry of this Order by the Commission.
	I.
FIL	NDINGS OF FACT
1. CAG CAPITAL, INC. i	s an Arizona corporation with a business address ir
Glendale, Arizona (hereafter, "CAG"). A	t all times relevant, CAG did business as the GLENDALE
	사망에 가 가장 전쟁을 가장하는 것이 같은 것이 있는 것이 있는 것이 있다. 것이 가장

CAR CONNECTION, an Arizona registered trade name. At all times relevant, CAG was engaged in "general investing."

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

2. KIM K. COLLINS ("COLLINS") is a single man who at all times relevant resided in Scottsdale, Arizona. COLLINS is the owner, president, chief executive officer and secretary of CAG.

3. CAG and COLLINS are collectively referred to hereafter as "RESPONDENTS."

4 From January 2002 to August 2007, RESPONDENTS sold unregistered securities within and from Arizona in the form of notes (the "Investments"). RESPONDENTS sold a total of \$989.251.91 of the Investments to 13 Arizona residents.

5. RESPONDENTS represented to investors that they would use Investment funds to finance car dealers who purchased used cars at auction.

6. RESPONDENTS represented to investors that the Investments would provide a profit of 1.5% per month, or 18% per year, and the eventual return of their principal Investment money on the expiration of the Investments' standard 12 month term.

7. RESPONDENTS documented the Investments with a standard-form, two-page "Promissory Note and Security Agreement" (the "Notes").

8. RESPONDENTS' investors consummated their Investments by signing their Notes, and by making their principal Investment payments to RESPONDENTS. Once an investor provided RESPONDENTS with their funds and signed Note, they had no contractual duties.

9. RESPONDENTS represented to their investors that the Investments were safe and secured by CAG's purported assets, and that RESPONDENTS' business was financially stable. The Notes further state that the Investments were secured by the purported assets of CAG.

10. RESPONDENTS failed to provide investors with any disclosures about CAG's business operations prior to their Investments, including the status of RESPONDENTS' auto loan portfolio, the assets that purportedly secured the Investments or CAG'S liabilities. RESPONDENTS failed to disclose to investors any risks associated with the Investments. 26

2

1 11. Contrary to RESPONDENTS' representations, the Investments were not safe or 2 secured, in part, because: (a) RESPONDENTS failed to file a UCC-1 financing statement with the 3 Arizona Secretary of State or to timely perfect a security interest in favor of the investors; (b) 4 investors were not added to the title of any of RESPONDENTS' assets or property; (c) the 5 Investments were not personally guaranteed or sufficiently collateralized with sufficient assets; and 6 (d) the auto loans issued by RESPONDENTS with investor money are subject to unpredictable 7 litigation results or bankruptcy proceedings.

8 12. By letter dated September 12, 2007, RESPONDENTS informed the investors for the 9 first time that CAG's business operations were failing. The letter states that CAG was subject to a 10 large tax liability and was engaged in several contract disputes and, as a result, RESPONDENTS 11 were closing their business operations and liquidating available assets. Despite RESPONDENTS' 12 unilateral, first-hand knowledge of their deteriorating business operations, RESPONDENTS sold 13 \$211,000 worth of the Investments in 2007, including an \$8,000 Investment to an existing investor 14 as late as August 16, 2007.

15 13. RESPONDENTS' investors lost their principal investments. Considering
 16 repayments, RESPONDENTS' investors are currently owed \$974,406.96.

17 18

II.

CONCLUSIONS OF LAW

191. The Commission has jurisdiction over this matter pursuant to Article XV of the20Arizona Constitution and the Securities Act.

- 21 2. RESPONDENTS offered or sold securities within or from Arizona, within the 22 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).
- 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
 were neither registered nor exempt from registration.
- 25 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
 26 neither registered as dealers or salesmen nor exempt from registration.

3

1	5. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
2	artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
3	engaging in transactions, practices, or courses of business that operate or would operate as a fraud
4	or deceit. RESPONDENTS' conduct included:
5	A. Misrepresenting to investors that they would earn an 18% profit on their
6	Investments in a 12 month period, and the return of their principal
7	Investment money.
8	B. Misrepresenting to investors that the Investments were secured.
9	C. Failing to disclose to investors any risks associated with the Investments.
10	D. Failing to timely disclose to investors in 2007 about RESPONDENTS'
11	deteriorating financial condition, while RESPONDENTS sold \$211,000
12	worth of the Investments.
13	6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to
14	A.R.S. § 44-2032.
15	7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.
16	§ 44-2032.
17	8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. §
18	44-2036.
19	III.
20	ORDER
21	THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and
22	RESPONDENTS' consent to the entry of this Order, attached and incorporated by reference, the
23	Commission finds that the following relief is appropriate, in the public interest, and necessary for
24	the protection of investors:
25	
26	

1 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and any of 2 RESPONDENTS' agents, employees, successors and assigns, permanently cease and desist from 3 violating the Securities Act.

IT IS FURTHER ORDERED that RESPONDENTS comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall 6 jointly and severally pay restitution to the Commission in the amount of \$974,406.96. Any 7 amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order 8 until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-9 bearing account controlled by the Commission. The Commission shall disburse the funds on a 10 pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the 11 Commission cannot disburse because an investor refuses to accept such payment shall be disbursed 12 on a pro-rata basis to the remaining investors shown on the records of the Commission. Any funds 13 that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to 14 the general fund of the state of Arizona. 15

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall jointly and severally pay an administrative penalty in the amount of \$50,000. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. The payment obligations for these administrative penalties shall be subordinate to any restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon RESPONDENTS' default with respect to RESPONDENTS' restitution obligations.

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

5

26

4

5

1	IT IS FURTHER ORDERED, that if any RESPONDENT fails to comply with this order,
2	the Commission may bring further legal proceedings against that RESPONDENT, including
3	application to the superior court for an order of contempt.
4	IT IS FURTHER ORDERED that this Order shall become effective immediately.
5	BY ORDER OF THE ARIZONA CORPORATION COMMISSION
6 7	Ligger William Mindel
8	CHAIRMAN COMMISSIONER
9	Mulling The CAR.
10	Commissioner Commissioner Commissioner
6	COMMISSIONER COMMISSIONER COMMISSIONER
12	IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
	Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the
13	official seal of the Commission to be affixed at the
14	Capitol, in the City of Phoenix, this 3^{+-} day of 0 (10) 2008 .
15	
16	$\sim 1 \mu$
17	BRIAN C. McNEIL
18	EXECUTIVE DIRECTOR
19	
20	DISSENT
21	
22	
	DISSENT
23 24	This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator, voice phone number 602-542-3931, e-mail <u>lhogan@azcc.gov.</u>
25	volve phone number 002 - 3 - 2 - 3 - 3 - 3 , c-main <u>mogan(wazve.gov.</u>
	(MD)
26	[1] 이 것은 사람이 있는 것은
	6 Decision No. 70546

2

3

4

5

6

7

8

9

10

1

CONSENT TO ENTRY OF ORDER

1. Respondents KIM K. COLLINS, an individual, and CAG CAPITAL, INC., an Arizona corporation (collectively, "RESPONDENTS") admit the jurisdiction of the Commission over the subject matter of this proceeding. RESPONDENTS acknowledge that RESPONDENTS have been fully advised of their right to a hearing to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. RESPONDENTS acknowledge that this Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order") constitutes a valid final order of the Commission.

11

12

13

14

15

20

21

22

23

24

25

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

3. RESPONDENTS acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. RESPONDENTS acknowledge that RESPONDENTS have been represented by an
attorney in this matter, RESPONDENTS have reviewed this Order with RESPONDENTS'
attorney, Carlos Arboleda, Esq. of the law firm Arboleda Brechner, and understand all terms it
contains.

5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order. RESPONDENTS agree that RESPONDENTS shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the state to engage in the practice of any business or profession.

7

6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis. RESPONDENTS will undertake steps necessary to assure that all of RESPONDENTS' agents and employees understand and comply with this agreement.

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

7. While this Order settles this administrative matter between RESPONDENTS and the Commission, RESPONDENTS understand that this Order does not preclude the Commission from instituting other administrative or civil proceedings based on violations that are not addressed by this Order.

8. RESPONDENTS understand that this Order does not preclude the Commission from referring this matter to any governmental agency for administrative, civil, or criminal proceedings that may be related to the matters addressed by this Order.

9. RESPONDENTS understand that this Order does not preclude any other agency or officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal proceedings that may be related to matters addressed by this Order.

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

11. RESPONDENTS agree that RESPONDENTS will not exercise any control over any entity that offers or sells securities or provides investment advisory services within or from Arizona until such time as all restitution and penalties under this Order are paid in full.

12. RESPONDENTS agree that RESPONDENTS will not sell any securities in or from Arizona without being properly registered in Arizona as a dealer or salesman, or exempt from such registration; RESPONDENTS will not sell any securities in or from Arizona unless the securities are registered in Arizona or exempt from registration; and RESPONDENTS will not transact

business in Arizona as an investment adviser or an investment adviser representative unless properly licensed in Arizona or exempt from licensure.

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

7 14. RESPONDENTS consent to the entry of this Order and agree to be fully bound by
8 its terms and conditions.

9 15. RESPONDENTS acknowledge and understand that if RESPONDENTS fail to 10 comply with the provisions of the order and this consent, the Commission may bring further legal 11 proceedings against RESPONDENTS, including application to the superior court for an order of 12 contempt.

13 16. RESPONDENTS understand that default shall render RESPONDENTS liable to the
14 Commission for its costs of collection and interest at the maximum legal rate.

15 17. RESPONDENTS agree and understand that if RESPONDENTS fail to make any 16 payment as required in the Order, any outstanding balance shall be in default and shall be 17 immediately due and payable without notice or demand. RESPONDENTS agree and understand 18 that acceptance of any partial or late payment by the Commission is not a waiver of default by 19 Commission.

18. RESPONDENT KIM K. COLLINS represents that he is the owner, president, chief
executive officer and secretary of RESPONDENT CAG CAPITAL, INC. ("CAG") and has been
authorized by CAG to enter into this Order for and on behalf of it.

9

23 ///

1

2

3

4

5

6

24

25 ///

111

26 ||///

Docket No. S-20607A-08-0381

1 2 KIM K. COLLINS 3 STATE OF ARIZONA) 4) ss County of) 5 6 SUBSCRIBED AND SWORN TO BEFORE me this 31 day of _ 7 8 PUBLIC 9 My commission expires: 10 mac 14,2011 11 DIANA E ULLOA Notary Public - Arizona 12 MARICOPA COUNTY Commission Expires 13 June 14, 2011 CAG CAPITAL, INC., an Arizona corporation 14 By: 15 16 Owner, president, chief executive officer and Its: 17 secretary STATE OF ARIZONA) 18) ss County of) 19 SUBSCRIBED AND SWORN TO BEFORE me this 31 st day of July 2008. 20 21 22 NOTARY PUBLIC 23 My commission expires: 1,2011 24 25 DIANA E ULLOA Notary Public - Arizona 26 MARICOPA COUNTY **Commission Expires** 10 Juna 14, 2011 Decision No. 70546