

ORIGINAL

NEW APPLICATION



0000121105

BEFORE THE ARIZONA CORPORATION COMMISSION

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

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of:

DAVID COME VIENS (f.k.a. "DAVID WARNER COME," "DAVID ZACHERY COMBS" & "DAVID ZACHERY"), a single man,

SCOTT ANDREW KLASCHKA and [REDACTED], husband and wife,

ASSISTED LIVING DEVELOPMENT COMPANY, INC., an Arizona corporation,

ALDCO INVESTMENT #2 L.L.C. (d.b.a. "CONCORDE ASSISTED LIVING"), an Arizona limited liability company,

ALDCO INVESTMENT #3 L.L.C. (d.b.a. "ASSISTED LIVING RESIDENCES AT 51"), an Arizona limited liability company,

ALDCO INVESTMENT #4 L.L.C. (d.b.a. "BRIDGES OF ARCADIA ASSISTED LIVING AND MEMORY CARE"), an Arizona limited liability company,

ALDCO INVESTMENT #5 L.L.C. (d.b.a. "COTTAGES AT COUNTRY CLUB I"), an Arizona limited liability company,

ALDCO INVESTMENT #6 L.L.C. (d.b.a. "REFLECTION BAY ASSISTED LIVING AND MEMORY CARE"), an Arizona limited liability company,

ALDCO INVESTMENT #10 L.L.C. (d.b.a. "GREAT PLAINS ASSISTED LIVING AND MEMORY CARE"), an Arizona limited liability company,

Respondents.

DOCKET NO. S-20773A-10-0493

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

Arizona Corporation Commission
DOCKETED
DEC 15 2010

DOCKETED BY *NR*

RECEIVED
2010 DEC 15 A 10:45
AZ CORP COMMISSION
DOCKET CONTROL

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 DAVID COME VIENS (f.k.a. "DAVID WARNER COME," "DAVID ZACHERY COMBS" & "DAVID ZACHERY"), SCOTT ANDREW KLASCHKA, ASSISTED LIVING DEVELOPMENT COMPANY, INC., ALDCO INVESTMENT #2 L.L.C. (d.b.a. "CONCORDE ASSISTED LIVING"), ALDCO INVESTMENT #3 L.L.C. (d.b.a. "ASSISTED LIVING RESIDENCES AT 51"), ALDCO INVESTMENT #4 L.L.C. (d.b.a. "BRIDGES OF ARCADIA ASSISTED LIVING AND MEMORY CARE"), ALDCO INVESTMENT #5 L.L.C. (d.b.a. "COTTAGES AT COUNTRY CLUB I"), ALDCO INVESTMENT #6 L.L.C. (d.b.a. "REFLECTION BAY ASSISTED LIVING AND MEMORY CARE"), and ALDCO INVESTMENT #10 L.L.C. (d.b.a. "GREAT PLAINS ASSISTED LIVING AND MEMORY CARE"), 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").

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. Respondent DAVID COME VIENS (f.k.a. "DAVID WARNER COME," "DAVID ZACHERY COMBS" & "DAVID ZACHERY") ("VIENS") is a single man and an Arizona resident. At all times relevant, VIENS issued, offered and sold investments within and from Arizona in his individual capacity, and on behalf of Respondents: (a) ASSISTED LIVING DEVELOPMENT COMPANY, INC. ("ALDCO") as its chief executive officer, chairman, "Non-Executive Chairman" and investment salesman; (b) ALDCO INVESTMENT #2 L.L.C. (d.b.a. "CONCORDE ASSISTED

1 LIVING”) (“ALDCO #2”) as its business consultant and investment salesman; (c) ALDCO
2 INVESTMENT #3 L.L.C. (d.b.a. “ASSISTED LIVING RESIDENCES AT 51”) (“ALDCO #3”) as
3 its business consultant and investment salesman; (d) ALDCO INVESTMENT #4 L.L.C. (d.b.a.
4 “BRIDGES OF ARCADIA ASSISTED LIVING AND MEMORY CARE”) (“ALDCO #4”) as its
5 business consultant and investment salesman; (e) ALDCO INVESTMENT #5 L.L.C. (d.b.a.
6 “COTTAGES AT COUNTRY CLUB I”) (“ALDCO #5”) as its business consultant and investment
7 salesman; (f) ALDCO INVESTMENT #6 L.L.C. (d.b.a. “REFLECTION BAY ASSISTED
8 LIVING AND MEMORY CARE”) (“ALDCO #6”) as its business consultant and investment
9 salesman; and (g) ALDCO INVESTMENT #10 L.L.C. (d.b.a. “GREAT PLAINS ASSISTED
10 LIVING AND MEMORY CARE”) (“ALDCO #10”) as its business consultant and investment
11 salesman. VIENS has not been registered as a securities salesman or dealer by the Commission.

12 3. Respondent SCOTT ANDREW KLASCHKA (“KLASCHKA”) is a married man and
13 an Arizona resident. At all times relevant, KLASCHKA issued, offered and sold the investments
14 discussed below within and from Arizona in his individual capacity, and on behalf of: (a) ALDCO as
15 its president, chief executive officer, chief operating officer and investment salesman; (b) ALDCO #2
16 as its managing member and investment salesman; (c) ALDCO #3 as its managing member and
17 investment salesman; (d) ALDCO #4 as its managing member and investment salesman; (e) ALDCO
18 #5 as its managing member and investment salesman; (f) ALDCO #6 its managing member and
19 investment salesman; and (g) ALDCO #10 as its managing member and investment salesman.
20 KLASCHKA has not been registered as a securities salesman or dealer by the Commission.

21 4. ALDCO was formed by KLASCHKA as an Arizona corporation on August 4, 2005.
22 At all times relevant, ALDCO maintained its principal places of business in Phoenix and Scottsdale,
23 Arizona. ALDCO has not been registered by the Commission as a securities dealer.

24 5. ALDCO #2 was organized by KLASCHKA as a manager-managed Arizona limited
25 liability company on October 19, 2005. At all times relevant, ALDCO #2 maintained its principal
26

1 places of business in Phoenix and Scottsdale, Arizona. ALDCO #2 has not been registered by the
2 Commission as a securities dealer.

3 6. ALDCO #3 was organized as a manager-managed Arizona limited liability company
4 by KLASCHKA on October 19, 2005. According to ALDCO #3's Operating Agreement, its initial
5 managing member was ALDCO. At all times relevant, ALDCO #3 maintained its principal places of
6 business in Phoenix and Scottsdale, Arizona. ALDCO #3 has not been registered by the Commission
7 as a securities dealer.

8 7. ALDCO #4 was organized as a manager-managed Arizona limited liability company
9 by KLASCHKA on November 18, 2005. At all times relevant, ALDCO #4 maintained its principal
10 places of business in Phoenix and Scottsdale, Arizona. ALDCO #4 has not been registered by the
11 Commission as a securities dealer.

12 8. ALDCO #5 was organized by KLASCHKA as a manager-managed Arizona limited
13 liability company on November 18, 2005. At all times relevant, ALDCO #5 maintained its principal
14 places of business in Phoenix and Scottsdale, Arizona. ALDCO #5 has not been registered by the
15 Commission as a securities dealer.

16 9. ALDCO #6 was organized by KLASCHKA as a manager-managed Arizona limited
17 liability company on November 18, 2005. At all times relevant, ALDCO #6 maintained its principal
18 places of business in Phoenix and Scottsdale, Arizona. ALDCO #6 has not been registered by the
19 Commission as a securities dealer.

20 10. ALDCO #10 was organized by KLASCHKA as a manager-managed Arizona limited
21 liability company on October 16, 2007. At all times relevant, ALDCO #10 maintained its principal
22 places of business in Phoenix and Scottsdale, Arizona. ALDCO #10 has not been registered by the
23 Commission as a securities dealer.

24 11. VIENS, KLASCHKA, ALDCO, ALDCO #2, ALDCO #3, ALDCO #4, ALDCO #5,
25 ALDCO #6, and ALDCO #10, may be referred to as "Respondent(s)."
26

1 12. ALDCO #2, ALDCO #3, ALDCO #4, ALDCO #5, ALDCO #6 and ALDCO #10 may
2 be referred to individually as an "ALDCO Entity" or collectively as the "ALDCO Entities."

3 13. [REDACTED] ("Respondent Spouse") was at all relevant times the spouse of
4 KLASCHKA. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for
5 purposes of determining the liability of KLASCHKA and Respondent Spouse's marital community.

6 14. At all times relevant, KLASCHKA was acting for his own benefit and for the benefit
7 or in furtherance of KLASHKA and Respondent Spouse's marital community.

8 **III.**

9 **FACTS**

10 **A. Respondents' Assisted Living Facility Business**

11 15. At all times relevant, VIENS and KLASCHKA represented to offerees and
12 investors, both verbally and in writing, that Respondents were engaged in the business of
13 purchasing, leasing, developing and managing assisted living and memory care facilities (the
14 "Facility(ies)").

15 16. As explained on the "Welcome" page of Respondents' website at www.aldco.net
16 (the "Website"):

17 Assisted Living Development Company Inc. (ALDCO) is an Arizona based
18 corporation, in the business of owning and operating senior living and memory care
19 communities across the country...ALDCO's business model is to acquire
20 underperforming communities and build value through physical enhancements,
21 comprehensive operations and aggressive marketing programs that maximize
22 revenue potential...Each property is operated as a single asset entity under one of
23 ALDCO's numerous investment companies [*i.e.*, ALDCO #2, etc.] with Assisted
24 Living Development Company Inc. managing these properties...Acquisitions are
25 made as a result of private investment, long term financing and partnership
26 agreements. ALDCO's management team consists of a group of highly experienced
professionals with direct experience in over 250 communities.

17 17. From approximately 2005 to 2008, Respondents' investment solicitation materials
24 and/or Website included an "Investment Opportunities" page that stated:

26 ALDCO, Inc. is committed to maximizing investment returns and currently has both
short and long term investment opportunities available. To find out more

1 information on investment opportunities at ALDCO, Inc please contact: Scott
2 Klaschka, Chief Operating Officer....”

3 (the “Investment Opportunities Page”) (emphasis in original). The Investment Opportunities Page
4 provided potential investors with KLASCHKA’s email address, and Respondents’ Scottsdale,
5 Arizona business address, telephone and fax numbers.

6 18. From approximately 2005 to 2008, Respondents’ investment solicitation materials
7 and/or Website included a “Contact Us” page that provided potential investors with additional
8 email addresses they could use to request information regarding Respondents’ “Investment
9 Opportunities.” Without limitation, the Contact Us page also stated that: (a) VIENS was ALDCO’s
10 “Chief Executive Officer;” and (b) that KLASCHKA was ALDCO’s “Chief Operating Officer.”

11 **B. The ALDCO Investments and Investors**

12 19. From on or about January 11, 2005, to approximately 2010, Respondents issued,
13 offered and sold investments in the form of notes and limited liability company membership
14 interests in the ALDCO Entities within or from Arizona to raise capital for their acquisition,
15 renovation and operation of the Facilities.

16 20. These investments were documented, in part, by: (a) promissory notes made and
17 executed by both VIENS and KLASHKA in their individual capacities and on behalf of ALDCO
18 and/or the ALDCO Entities; (b) various written “Agreement[s]” executed by both VIENS and
19 KLASCHKA in their individual capacities, and on behalf of ALDCO and/or the ALDCO Entities;
20 (c) Operating Agreements for “Units” of limited liability company membership interests in the
21 ALDCO Entities, and related “Subscription Agreements” executed by investors, and acknowledged
22 and accepted by KLASCHKA in his capacity as managing member and “authorized representative”
23 of the ALDCO Entities; and (d) tax return documents, including “Schedule K-1” forms relating to
24 investors’ income, losses, deductions and credits (the “ALDCO Investments”).

25 21. The ALDCO Investments have not been registered as securities with the
26 Commission to be offered or sold within or from Arizona.

1 22. At all times relevant, VIENS and KLASCHKA represented to ALDCO Investment
2 investors that Respondents would pool and/or combine investors' ALDCO Investment funds
3 together with those obtained through, for example, bank loans and purchase money mortgages to
4 purchase, lease develop and/or operate various Facilities.

5 23. The ALDCO Investment investors' funds were transferred, wired and/or deposited
6 into Arizona bank accounts owned and controlled by Respondents. Respondents also often moved
7 and/or loaned ALDCO Investment funds between ALDCO and the ALDCO Entities as needed to
8 support Respondents' business operations. These inter-company loans and money transfers were
9 documented, in part, in ALDCO and/or ALDCO Entity balance sheets.

10 24. Respondents issued and sold approximately fifty-one separate ALDCO Investments
11 to twenty-three investors totaling \$6,844,697. Of this amount, approximately: (a) \$6,844,697 of the
12 ALDCO Investments were issued and sold by VIENS and KLASHCKA individually and/or on
13 behalf of ALDCO; (b) \$167,987 of the ALDCO Investments were issued by ALDCO #2; (c)
14 \$352,655 of the ALDCO Investments were issued by ALDCO #3; (d) \$100,000 were issued by
15 ALDCO #4; (e) \$75,000 of the ALDCO Investments were issued by ALDCO #5; (f) \$50,000 of the
16 ALDCO Investments were issued by ALDCO #6; and (g) \$264,121 of the ALDCO Investments
17 were issued by ALDCO #10.

18 25. In particular, Respondents issued and sold twenty-eight separate ALDCO
19 Investments to an elderly investor who currently resides in California totaling \$817,447 (the
20 "Elderly Investor").

21 26. VIENS met and befriended the Elderly Investor in 2004 while the Elderly Investor
22 was a resident in an assisted living facility located in Henderson, Nevada, where VIENS worked as
23 a "Marketing Consultant" and "Advisor."

24 27. Respondents transported the Elderly Investor to view assisted living Facilities that
25 Respondents were interested in purchasing, in part, with the Elderly Investor's ALDCO Investment
26 funds. These Facilities were variously located in Arizona, California and/or Nevada.

1 28. In the memo field on her ALDCO Investment checks, the Elderly Investor referred
2 to the specific ALDCO Facility she was told would be acquired, in part, with her funds. For
3 example, the Elderly Investor's ALDCO Investment checks included the following notations: (a)
4 Facilities "1-5;" (b) "Facility #5;" (c) Facilities "6-7;" (d) Facility "8;" (e) Facility "9;" and (f)
5 Facility "10." A June 28, 2006, cashier's check for \$98,000 was made by the Elderly Investor
6 directly to "ALDCO INVESTMENTS [sic] #3." The personal check she made to generate the
7 funds for that cashier's check also included the notation, "Closing Phoenix," that refers to ALDCO
8 #3's lease/purchase of a Facility in Phoenix. The Elderly Investor also often referred to her
9 ALDCO Investments as "Investments" in the memo field of her ALDCO Investment checks.

10 29. Ultimately, Respondents used ALDCO Investment funds, without limitation, to
11 operate ALDCO and purchase, lease, renovate and manage Facilities through ALDCO #2, ALDCO
12 #3, ALDCO #4, ALDCO #5, ALDCO #6 and ALDCO #10.

13 **C. ALDCO Investment Terms and Documentation**

14 30. The terms of the ALDCO Investments varied, and were documented, in part, via
15 notes and written agreements prepared and executed by VIENS and/or KLASHKA in their
16 individual capacities, and on behalf of ALDCO and the ALDCO Entities.

17 31. For example, the Elderly Investor purchased two \$50,000 ALDCO Investments
18 totaling \$100,000 on January 11, 2005. VIENS documented these two ALDCO Investments via a
19 written, one page, unsecured and notarized "AGREEMENT" signed by both VIENS in his
20 individual capacity and the Elderly Investor on January 11, 2005 (the "1st Written Agreement").
21 The 1st Written Agreement promises the Elderly Investor the return of her principal investments
22 plus an additional \$25,000 "one time interest" payment, for a total return of \$125,000 within thirty-
23 one days. The 1st Written Agreement further states that: (a) VIENS "will use the [Elderly
24 Investor's] funds at his discretion and in conjunction with the advancement of his enterprises
25 including but not limited to the assisted living industry;" and (b) that VIENS "supports this
26 agreement with a personal note of guarantee." The 1st Written Agreement, as well as those set forth

1 below executed by VIENS in his individual capacity were approved and/or ratified by
2 KLASCHKA.

3 32. On January 11, 2005, VIENS also made and executed an unsecured, two page
4 "PROMISSORY NOTE (Long Form)" in favor of the Elderly Investor in his individual capacity
5 before a notary public (the "Note"). Like the 1st Written Agreement, the Note promises the Elderly
6 Investor a total return of \$125,000 within thirty-one days.

7 33. VIENS next drafted and signed a one page agreement in his individual capacity
8 before a notary on April 22, 2005 (the "2nd Written Agreement"), that amended and expanded on
9 the 1st Written Agreement. The 2nd Written Agreement acknowledges the Elderly Investor's
10 purchase of an additional \$75,000 ALDCO Investment, and states that VIENS will use such funds
11 "to secure an option on a specific retirement/senior living community on or before June 1, 2005."
12 The 2nd Written Agreement promises that VIENS: (a) will make a \$250,000 payment to the Elderly
13 Investor by August 1, 2005; and (b) provide the Elderly Investor with a two percent ownership
14 interest in a Facility to be purchased, in part, with the Elderly Investor's funds. The 2nd Written
15 Agreement further states that it is "personally guaranteed" by VIENS.

16 34. On May 24, 2005, VIENS drafted another one page agreement that acknowledges
17 the Elderly Investor's purchase of two ALDCO Investments totaling \$39,367.42 (the "May 24
18 Agreement"). The May 24 Agreement was signed by VIENS in his individual capacity, and
19 promises the investor the return of her principal investment plus interest on the \$39,367.42 amount
20 at the rate of twenty percent until paid in full. Attached to the May 24 Agreement is a single page
21 document including calculations of how VIENS would use the Elderly Investor's \$39,367.42 in
22 investment funds to purchase an unspecified Facility.

23 35. VIENS also drafted a one page letter agreement dated January 11, 2006, on ALDCO
24 letterhead that acknowledges the Elderly Investor's purchase of \$167,987.20 worth of ALDCO
25 Investments (the "January 11 Agreement"). The January 11 Agreement: (a) promises the Elderly
26

1 Investor a "3% ownership" interest in ALDCO #2; (b) was signed by VIENS in his capacity as the
2 "CEO" of ALDCO; and (c) identifies ALDCO's Scottsdale, Arizona business address.

3 36. VIENS drafted another one page letter agreement dated January 11, 2006, on
4 ALDCO letterhead that acknowledges the Elderly Investor's purchase of \$352,654.99 worth of
5 ALDCO Investments (the "Second January 11 Agreement"). The Second January 11 Agreement:
6 (a) promises the Elderly Investor a "5% ownership" interest in ALDCO #3; (b) was signed by
7 VIENS in his capacity as the "CEO" of ALDCO; and (c) identifies ALDCO's Scottsdale, Arizona
8 business address.

9 37. In another typical case, on January 24, 2008, both VIENS and KLASCHKA
10 executed an ALDCO Investment "Agreement" in their individual capacities, and on behalf of
11 ALDCO and ALDCO #10 (the "ALDCO #10 Agreement"). The ALDCO #10 Agreement: (a)
12 memorializes an investor's purchase of a \$250,000 ALDCO Investment; (b) promises the investor a
13 total return of \$300,000 within thirty days; and (c) is personally guaranteed by KLASCHKA on
14 behalf of ALDCO, and by both KLASCHKA and VIENS in their individual capacities. The
15 ALDCO #10 Agreement further states that KLASCHKA and VIENS will personally "make
16 certain...[the investor] is fully paid..." as set forth in the agreement.

17 38. Although VIENS and KLASCHKA personally guaranteed ALDCO Investments
18 purchased by both the Elderly Investor and other investors, VIENS and KLASCHKA failed to
19 further disclose to them that their assets were and/or could be insufficient to honor said guarantees.

20 **D. General ALDCO Investment Allegations**

21 39. Respondents managed the essential aspects of the ALDCO Investments and, without
22 limitation: (a) selected, inspected, evaluated and obtained appraisals of Facilities; (b) procured
23 financing for the purchase, lease, improvement and/or management of the Facilities; (c) negotiated
24 the purchase and lease prices of the Facilities; (d) rehabilitated and/or improved Facilities; (e)
25 sought and/or procured licenses and permits as necessary to operate the Facilities; (f) marketed the
26 Facilities to residents; (g) hired, trained and managed Facility staff; (h) collected fees from Facility

1 residents and reimbursements from third parties, including health insurance providers; and (i)
2 marketed and resold the Facilities, as applicable.

3 40. The investors purchased their ALDCO Investments for their "passive" profit
4 potential in the form of: (a) annual interest payments on their principal ALDCO Investments; (b)
5 increases in the value of their equity ownership interests in the ALDCO Entities and/or related
6 Facilities; and/or (c) profit distributions made by ALDCO and/or the ALDCO Entities.

7 41. At all times relevant, VIENS and KLASCHKA represented to offerees and investors
8 that the success of the ALDCO Investments would be based on VIENS' and KLASHCKA's skill
9 and experience in managing ALDCO Investment funds, and cost-effectively acquiring and
10 operating Facilities. Without limitation, RESPONDENTS' uses of ALDCO Investment funds,
11 fiscal strategies and cost saving and/or containment practices were detailed in annual reports
12 distributed to investors.

13 **E. VIENS' Undisclosed Previous Federal Felony Criminal Conviction**

14 42. From at least 2005 to 2008, Respondents represented to offerees and investors, both
15 verbally and in writing, that the ALDCO Investments would be profitable, in part, because they and
16 their staff were some of the "finest people in the world" and because they operated their assisted
17 living Facility business "*with integrity*" (emphasis in original).

18 43. Unbeknownst to ALDCO Investment investors, however, VIENS was indicted by a
19 federal criminal grand jury at the request of the United States Attorney for the Eastern District of
20 Louisiana on December 12, 1985, for allegedly engaging in a conspiracy with his brother to
21 commit fraud by wire in violation of 18 U.S.C.A. §§ 371 and 1343 (See, *United States of America*
22 *v. David W. Come, a/k/a David Zachary Combs, a/k/a David Zachary, et al.*, Criminal Docket No.
23 85-454) (the "Criminal Case"). VIENS was indicated in the criminal case with his brother.

24 44. The Criminal Case arose from the fact that VIENS and/or his brother led their victim
25 to believe that they brokered Arabian horses, and that the victim could make money by paying to
26 VIENS, his brother and/or a fictitious company called "Arabian Horse Partnership #3:" (a) \$15,000

1 for breeding rights to a famous Arabian stallion called "Alladin [sic];" (b) \$33,500 to purchase
2 thirteen Arabian horses that VIENS' brother represented were worth \$500,000; (c) \$6,000 to
3 transport the thirteen Arabian horses; and (d) \$4,300 to purchase a horse named "Beverly."

4 45. On or about February 18, 1986, VIENS pled guilty to conspiring with his brother to
5 commit wire fraud as charged in count one of the indictment in violation of 18 U.S.C. §§ 371,
6 1343, which alleged that: (a) VIENS opened up a bank account in the name of a non-existent entity
7 called "Arabian Horse Partnership #3;" (b) VIENS withdrew \$14,900 of the \$15,000 deposit made
8 by the victim into the bank account set up by VIENS, despite the fact that VIENS and his brother
9 did not broker Arabian horses, and did not have breeding rights to any Arabian horse named
10 Alladin [sic]; (c) VIENS and/or his brother only purchased eight horses for the victim at a cost of
11 \$9,000 that were not worth \$500,000; and (d) that no horse named Beverly was ever purchased by
12 VIENS and/or his brother for their victim at a cost of \$4,300.

13 46. As a result of VIENS' guilty plea, on March 26, 1986, VIENS was sentenced to
14 serve two years in federal prison and ordered to pay criminal restitution to his victim in the amount
15 of \$4,300. VIENS subsequently served his prison time and/or paid his restitution as ordered by the
16 judge in the Criminal Case.

17 47. The Elderly Investor would not have purchased her ALDCO Investments had she
18 been made aware of VIENS' previous federal felony conviction for conspiring to commit wire
19 fraud.

20 **F. VIENS' Undisclosed Name Change**

21 48. VIENS was indicted in the Criminal Case under his former name "David W. Come,"
22 and two related aliases "David Zachary Combs" and "David Zachary."

23 49. Unbeknownst to the ALDCO Investment investors, VIENS changed his name from
24 "David Warner Come" to "David Come Viens" on or about March 28, 1994 (*See*, Case No. 660266
25 (FC 6 (5)) (Circuit Court of St. Louis County, Missouri, 21st Judicial District).

26

VI.

VIOLATION OF A.R.S. § 44-1991

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

1
2
3
4 59. In connection with the offer or sale of securities within or from Arizona, Respondents
5 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
6 of material fact or omitted to state material facts that were necessary in order to make the statements
7 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
8 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
9 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

10 A. Representing to offerees and investors that they could earn substantial and/or
11 passive profits and returns of up to twenty percent of their principal ALDCO
12 Investments per year based on Respondents' management of their ALDCO
13 Investment funds, and the fact that Respondents operated the Facilities with
14 "integrity" and were some of the "finest people in the world," while further failing
15 to disclose to them either that: (1) VIENS had previously mismanaged the Arabian
16 horse investor's funds as set forth in the Criminal Case discussed above; and (2) that
17 VIENS changed his name as discussed above such that ALDCO Investment
18 investors could not have cost effectively or discovered altogether VIENS' previous
19 mismanagement of the Arabian horse investor's funds.

20 B. Representing to ALDCO Investment investors that VIENS and KLASCHKA were
21 personally guaranteeing some of the investors' ALDCO Investments, while further
22 failing to adequately disclose to them that VIENS and KLASCHKA's assets were
23 and/or could be insufficient to honor said guarantees.

24 60. This conduct violates A.R.S. § 44-1991.
25
26

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order Respondents to take affirmative action to correct the conditions resulting from their acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital community of KLASCHKA and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each Respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. 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>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

1 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
2 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
3 Opportunity for Hearing.

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 Shaylin A.
6 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
7 Requests should be made as early as possible to allow time to arrange the accommodation.

8 **IX.**

9 **ANSWER REQUIREMENT**

10 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing,
11 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
12 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
13 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
14 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
15 at <http://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 Mike Dailey.

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

On October 12, 2011, the Arizona Corporation Commission ordered this document to be placed under seal and maintained in the offices of the Securities Division.