ORIGINAL

In the matter of:

limited liability company,

COMMISSIONERS

TOM FORESE - Chairman

BOB BURNS ANDY TOBIN

BOYD DUNN JUSTIN OLSON

Pacific Capital Enterprises LLC, a Delaware

Venessa R. Sandoval, and John Doe Sandoval,

Respondents.

Superior Diamond Management LLC, a Delaware limited liability company,

Michael Barry Eckerman, and Tonva

Eckerman, husband and wife,

husband and wife,

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DEC 29 2017

DOCKET NO. S-21035A-17-0391

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

Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Pacific Capital Enterprises LLC, Superior Diamond Management LLC, Michael Barry Eckerman, and Venessa R. Sandoval 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 Superior Diamond Management LLC and Michael Barry Eckerman are persons controlling Pacific Capital Enterprises LLC within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Pacific Capital Enterprises LLC for its violations of the antifraud provisions of the Securities Act.

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I.

JURISDICTION

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

II.

RESPONDENTS

- 2. Pacific Capital Enterprises LLC, Superior Diamond Management LLC, Michael Barry Eckerman, and Venessa R. Sandoval may be referred to collectively as "Respondents."
- Pacific Capital Enterprises LLC ("Pacific") is a limited liability company organized under the laws of the state of Delaware in March 2015. Superior Diamond Management LLC has been the manager of Pacific since at least March 30, 2017.
- 4. Superior Diamond Management LLC ("Diamond") is a limited liability company organized under the laws of the state of Delaware in March 2017. Michael Barry Eckerman has been the manager of Diamond since at least March 30, 2017.
- Michael Barry Eckerman ("Eckerman") has been a married man and a resident of the state of Arizona since at least January 2017.
- Venessa R. Sandoval ("Sandoval") has been a married woman and a resident of the state of Arizona since at least March 30, 2017.
- 7. Since at least March 30, 2017, Tonya Eckerman has been the spouse of Respondent Eckerman, and John Doe Sandoval has been the spouse of Venessa Sandoval (Tonya Eckerman and John Doe Sandoval may be referred to collectively as "Respondent Spouses"). Respondent Spouses are joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital communities. The true name of John Doe Sandoval is presently unknown to the Division, and the Division will seek permission to amend this Temporary Order to Cease and Desist and Notice of Opportunity for Hearing to allege his true name when his true name is determined.

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8. At all relevant times, Eckerman and Sandoval have been acting for their own benefit and for the benefit or in furtherance of the marital communities.

III.

FACTS

- Pacific is a real estate company that acquired option rights and a possessory interest 9. in a piece of residential real estate to be rented out for vacation rentals, event rentals, corporate rentals, or other rentals. Pacific's offices have been located in Scottsdale, Arizona since at least March 30, 2017.
- Since at least April 5, 2017, Pacific has been offering investment contracts in the form 10. of limited liability company units ("LLC Units") to Arizona investors. Investors are entitled to a 10% annual return on their LLC Unit investments until Pacific redeems the LLC Units. Pacific has raised at least \$950,000 from at least nine Arizona investors ("Investors") from April 5, 2017, to at least October 17, 2017. Sandoval solicited at least five of these investments. Eckerman solicited at least three of these investments. Eckerman also signed the subscription agreements for at least nine Investors.
- Pacific's LLC Units offering seeks to raise \$4,000,000, and is projected to remain 11. open until January 31, 2018, so Pacific is still trying to raise approximately \$3,050,000.
- 12. Diamond has been the manager of Pacific since at least March 30, 2017. Eckerman has been the manager of Pacific's manager, Diamond, since at least March 30, 2017. Eckerman has also been the Chief Executive Officer of Pacific since at least March 30, 2017.
- Investors have no right to participate in the management or control of Pacific's 13. business or affairs. Investors can remove Diamond as Pacific's manager only for cause and only with the votes of 75% of the LLC Unit interests. This gives Eckerman, as Diamond's manager, virtually total control over all aspects of Pacific's business operations.
- Since at least March 30, 2017, Sandoval has been Pacific's Chief Commercial Officer. 14. Pacific pays Sandoval based exclusively on commissions for the sale of Pacific's LLC Units.

15. Pacific's Investors receive a private placement memorandum ("PPM") describing Pacific's business and management, but not all Investors receive the PPM before investing.

Omitting Securities Temporary Order

- 16. Pacific's PPM refers to the filing of the Division's December 12, 2016, Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("Temporary Order") regarding respondents including Eckerman and Premier Asset Management Group LLC ("PAMG"), a company affiliated with Pacific.
- 17. Pacific and Sandoval each omitted to at least one investor who did not receive the PPM before investing that Eckerman and PAMG were subject to the Division's Temporary Order, which alleged that Eckerman and PAMG had violated anti-fraud and registration provisions of the Arizona Securities Act.

Misrepresenting Property Ownership

- 18. Pacific, Eckerman, and Sandoval each misrepresented to at least two Investors that Pacific owned residential real estate.
- Actually, Pacific had never owned any residential real estate through at least
 December 6, 2017.

Omitting Overpayment to Affiliate

- 20. Pacific notes in the "Risk Factors" section of its PPM that transactions with Pacific's affiliates will not be arms-length transactions and will involve conflicts of interest. Eckerman controls affiliates of Pacific including PAMG and Forty Sixth Place LLC ("Forty Sixth Place").
- 21. Pacific's PPM also states to Investors that Pacific plans to "purchase Residences owned by its Affiliate, [PAMG]," and states that it intends to pay 95% of the property value, as estimated by a broker's price opinion. This statement implied that PAMG would give Pacific a 5% discount in real estate transactions between them.

22. Pacific eventually did enter into a real estate deal with PAMG and Forty Sixth Place on May 5, 2017, to purchase option rights to a house in Paradise Valley ("Option Rights"). PAMG did not give Pacific a discount in this real estate transactions between them.

- 23. Instead, Pacific overpaid PAMG and Forty Sixth Place for the Option Rights. Forty Sixth Place purchased the Option Rights for \$2,750,000. PAMG and Forty Sixth Place sold the Options Rights to Pacific nine months later for \$5,367,500, which was over 195% of Forty Sixth Place's purchase price.
- 24. Pacific omitted to at least five investors that Pacific would overpay or had overpaid affiliate companies controlled by Eckerman in a real estate transaction.

IV.

VIOLATION OF A.R.S. § 44-1991

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

- 25. In connection with the offer or sale of securities within or from Arizona, Respondents Pacific, Eckerman, and Sandoval 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 Pacific, Eckerman, and Sandoval's conduct includes, but is not limited to, the following:
- a) Pacific and Sandoval each omitted to at least one investor who did not receive the PPM before investing that Eckerman and PAMG were subject to the Division's December 12, 2016, Temporary Order to Cease and Desist and Notice of Opportunity for Hearing;
- b) Pacific, Eckerman, and Sandoval each misrepresented to at least two
 Investors that Pacific owned residential real estate; and
- c) Pacific omitted to at least five investors that Pacific would overpay or had overpaid affiliate companies controlled by Eckerman in a real estate transaction.

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

V.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

- 27. Since at least March 30, 2017, Diamond has been the manager of Pacific and Eckerman has been Chief Executive Officer of Pacific and the manager of Diamond.
- 28. Since at least March 30, 2017, Diamond and Eckerman directly or indirectly controlled Pacific within the meaning of A.R.S. § 44-1999. Therefore, Diamond and Eckerman are jointly and severally liable to the same extent as Pacific for its violations of A.R.S. § 44-1991 from at least March 30, 2017.

VI.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondents Pacific, Eckerman, and Sandoval, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with Respondents Pacific, Eckerman, and Sandoval CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

IT IS FURTHER ORDERED that if a request for hearing is made, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED that this Order shall be effective immediately.

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VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- Order Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
- Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 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 communities of Respondent Eckerman, Respondent Sandoval, and Respondent Spouses are 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 Spouses may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If a Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West 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 www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,

Order shall remain effective from the date a hearing is requested until a decision is entered.

After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

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

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

IX.

ANSWER REQUIREMENT

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

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

The Answer shall contain an admission or denial of each allegation in this Temporary Order and Notice and the original signature of the answering respondent or the respondent's attorney. A

statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 29th day of December, 2017.

Matthew J. Neubert Director of Securities