

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE - Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

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Arizona Corporation Commission

DOCKETED

MAY -8 2018

DOCKETED BY
[Signature]

In the matter of:

ADVANCED PLANNING CONCEPTS,
LLC, a Michigan limited liability company,
CRD #164725, and

THOMAS J. CRISMAN, CRD #851859, an
Arizona resident,

Respondents.

DOCKET NO. S-21046A-18-0115

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO CEASE
AND DESIST, ORDER FOR RESTITUTION,
ORDER FOR ADMINISTRATIVE
PENALTIES, ORDER OF REVOCATION,
AND ORDER FOR OTHER AFFIRMATIVE
ACTION

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 Advanced Planning Concepts, LLC ("APC") and Thomas J. Crisman 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") and the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

I.

JURISDICTION

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

II.

RESPONDENTS

2. Crisman is a single man who has resided in Arizona from fall 2012 to the present. Since November 2012, Crisman has been licensed by the Commission as an investment adviser representative

1 associated with APC. Crisman also has an investment adviser representative license associated with
2 FBA Wealth Management, LLC.

3 3. Crisman is an insurance producer licensed in Arizona, license number 333129.

4 4. APC is a Michigan limited liability company. Crisman is its sole member. Since October
5 2011, APC has been registered in Arizona as a foreign entity. In fall 2012, APC and Crisman moved to
6 Arizona. Since November 2012, APC has been licensed by the Commission as an investment adviser.

7 5. Crisman and APC may be referred to collectively as "Respondents."

8 **III.**

9 **FACTS**

10 6. Crisman provides investment advisory services and sells insurance through his entity,
11 APC.

12 7. APC has no other employees and is essentially an alter ego for Crisman.

13 8. Respondents charge clients an annual management fee for investment advisory
14 services. The fee is .4% of the gross amount of assets under management. Most clients pay the fee
15 quarterly after receiving an invoice.

16 9. Private Placement Capital Notes II, LLC ("PPCN") is a Colorado entity managed by
17 Anthony Hartman. PPCN sells promissory notes to investors then purportedly uses the investor funds
18 to make bridge loans. PPCN occasionally sells these notes through Stone Mountain Equities, a
19 subsidiary company owned by PPCN and managed by Hartman. PPCN and Stone Mountain will be
20 referred to collectively as "PPCN."

21 10. From November 2012 through 2016, Respondents sold within or from Arizona at least
22 30 PPCN notes to 14 different investment advisory clients. The principal amount of the notes totaled
23 \$1,807,122.

24 11. From 2006 through 2012, i.e. prior to moving to Arizona, Respondents sold an
25 additional 10 PPCN notes to five clients, bringing the total number of Respondents' investment
26

1 advisory clients who purchased notes to 15. The principal amount of these 10 additional notes totaled
2 \$740,000.

3 12. Respondents informed clients of the opportunity to invest in PPCN notes through in-
4 person meetings, letters, and inviting clients to attend presentations about PPCN given by Hartman.

5 13. The PPCN investors were to receive monthly interest payments at annual rates
6 between 8% to 12.5%, then a balloon payment at the end of the term. The notes' terms ranged from
7 one to five years.

8 14. From 2013 to early 2016, five investors received some interest payments on
9 approximately eight PPCN notes.

10 15. Other than the few payments described in the preceding paragraph, the 15 investors
11 did not receive interest payments. Rather, when interest became due, that unpaid interest was rolled
12 over into the respective investor's principal balance.

13 16. The amount rolled over and added to the principal was included in the gross assets of
14 the investor when Respondents calculated the .4% management fee billed to their clients.

15 17. One investor received two interest payments from PPCN on her note. After PPCN
16 stopped paying the interest on the investor's note, Crisman offered to pay the investor \$700 each
17 month as a loan. Through text messages, Crisman informed the client that she could repay the loan
18 when she received her payments from PPCN. Pursuant to this agreement, Crisman, using APC's
19 checking account, wrote several checks payable to the investor in amounts of either \$1400 or \$700
20 with the word "loan" written in the check description. Like the other investors, this investor was
21 Respondents' investment advisory client.

22 18. In January 2013, APC entered a "Management Agreement" with PPCN where PPCN
23 agreed to pay APC an annual management fee equal to 1.1% of investor funds from investors that
24 Respondents referred to PPCN.

19. The amount of unpaid interest that was rolled over and added to the investors' principal was included in the investor funds obtained through APC when PPCN calculated the 1.1% management fee it owed to APC.

20. Pursuant to the 2013 Management Agreement, PPCN made several payments to Respondents. After PPCN stopped making payments to Respondents in 2016, PPCN acknowledged that it owed Respondents several thousand dollars more for unpaid compensation.

21. Respondents failed to disclose in writing to investors who purchased notes after January 2013, that PPCN was paying APC for all PPCN notes that Respondents sold.

22. Not only did Respondents fail to disclose their compensation from PPCN in writing, in at least two written documents they flatly denied that such payments exist. In its 2013 – 2017 Form ADVs—which is made publicly available and which investment adviser representatives are required to provide to clients under Commission Rule R14-6-205—APC represented that it does not “accept[] commissions or any other form of compensation for selling you securities or other investment products” and that Respondents do “not have any relationships with issuers of securities.” When Respondents signed new agreements with APC’s investment advisory clients in 2017, titled “Best Interest of the Client Agreement,” those agreements state that Respondents “do not earn sales commissions by selling securities.”

v.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

23. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

24. This conduct violates A.R.S. § 44-1842.

VI.**REMEDIES PURSUANT TO A.R.S. § 44-3201****(Denial, Revocation, or Suspension of Investment Adviser or Investment Adviser Representative License; Restitution, Penalties, or other Affirmative Action)**

25. Respondents' conduct is grounds to revoke Respondent APC's investment adviser license and Respondent Crisman's licenses as an investment adviser representative associated with APC and FBA Wealth Management, LLC, with the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of Respondents' licenses would be in the public interest, and Respondents have engaged in dishonest or unethical practices in the securities industry under A.R.S. § 44-3201(A)(13) and Commission Rule R14-6-203 by:

a) Loaning money to a client; and

b) Failing to disclose to clients, in writing, before entering or renewing an investment advisory agreement with clients and before rendering investment advice, that Respondents had an agreement to receive compensation from PPCN for offering and selling PPCN notes.

26. Respondents' conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-3201.

VII.**VIOLATION OF A.R.S. § 44-3241****(Fraud in the Provision of Investment Advisory Services)**

27. Respondents engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which Respondents, directly or indirectly made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made includes, but is not limited to, representing to clients that Respondents did not make any commissions by selling securities and that Respondents did not have any relationships with securities issuers when in fact,

1 Respondents had an agreement with PPCN pursuant to which Respondents received compensation
2 for selling PPCN notes.

3 28. This conduct violates A.R.S. § 44-3241.

4 **VIII.**

5 **REQUESTED RELIEF**

6 The Division requests that the Commission grant the following relief:

7 1. Order Respondents to permanently cease and desist from violating the IM Act pursuant
8 to A.R.S. §§ 44-2032, 44-3201 and 44-3292;

9 2. Order Respondents to take affirmative action to correct the conditions resulting from
10 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
11 A.R.S. §§ 44-2032, 44-3292 and 44-3201;

12 3. 3. Order Respondents to pay the state of Arizona administrative penalties of up to \$5,000
13 for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

14 4. Order Respondents to pay the state of Arizona administrative penalties of up to \$1,000
15 for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

16 5. Order the revocation of Respondent APC's license as an investment adviser and
17 Crisman's licenses as an investment adviser representative pursuant to A.R.S. § 44-3201; and

18 6. Order any other relief that the Commission deems appropriate.

19 **IX.**

20 **HEARING OPPORTUNITY**

21 Each respondent may request a hearing pursuant to A.R.S. §§ 44-1972 and 44-3212 and A.A.C.
22 R14-4-306. **If a Respondent requests a hearing, the requesting respondent must also answer this**
23 **Notice.** A request for hearing must be in writing and received by the Commission within 10 business
24 days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or
25 mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,
26

1 Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or
2 on the Commission's website at <http://www.azcc.gov/divisions/hearings/docket.asp>.

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20
4 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or
5 ordered by the Commission. If a request for a hearing is not timely made the Commission may, without
6 a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for
7 Hearing.

8 Persons with a disability may request a reasonable accommodation such as a sign language
9 interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon,
10 ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests should
11 be made as early as possible to allow time to arrange the accommodation. Additional information
12 about the administrative action procedure may be found at
13 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

14 **X.**

15 **ANSWER REQUIREMENT**

16 Pursuant to A.A.C. R14-4-305, if a respondent requests a hearing, the requesting respondent
17 must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona
18 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days
19 after the date of service of this Notice. Filing instructions may be obtained from Docket Control by
20 calling (602) 542-3477 or on the Commission's website at
21 <http://www.azcc.gov/divisions/hearings/docket.asp>.

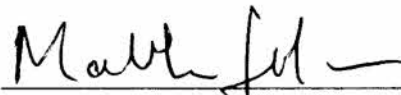
22 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
23 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
24 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
25 addressed to Ryan Millecam.
26

1 The Answer shall contain an admission or denial of each allegation in this Notice and the
2 original signature of the answering respondent or respondent's attorney. A statement of a lack of
3 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
4 denied shall be considered admitted.

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

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

10 Dated May 8, 2018.

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13 Matthew J. Neubert
14 Director of Securities
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