

BEFORE THE ARIZONA CORPORATION COMMISSION

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2
3 WILLIAM A. MUNDELL
Chairman
4 JIM IRVIN
Commissioner
5 MARC SPITZER
Commissioner

6 In the matter of:) DOCKET NO. S-03457A-02-0000
7)
8 AMERICAN AUTOMOTIVE GROUP, INC.) **NOTICE OF OPPORTUNITY FOR**
c/o Douglas Warren) **HEARING REGARDING PROPOSED**
9 9044 East Los Gatos Drive) **ORDER TO CEASE AND DESIST, FOR**
Scottsdale, Arizona 85255) **RESTITUTION, FOR ADMINISTRATIVE**
10 DOUGLAS WARREN and JANE DOE WARREN,) **PENALTIES, AND FOR OTHER**
husband and wife) **AFFIRMATIVE ACTION**
11 9044 East Los Gatos Drive)
Scottsdale, Arizona 85255)
12)
13 MATTHEW W. WARREN and JOAN DOE)
WARREN, husband and wife)
8912 East Pinnacle Peak #446)
14 Scottsdale, Arizona 85255)
15)
16 ROBERT D. BJERKEN and JANE DOE)
BJERKEN, husband and wife)
5024 North 78th Street)
17 Scottsdale, Arizona 85250)
18 Respondents.)

19 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING (See VIII)**
20 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER (See IX)**

21 The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”)
22 alleges that RESPONDENTS have engaged in acts, practices and transactions, which constitute violations
23 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).
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1 trustee of a certain trust established by a trust Indenture agreement dated May 9, 1997 (the “AAG
2 Trust”).

3 8. At all times material hereto, RESPONDENT JANE DOE BJERKEN was the spouse of
4 BJERKEN. All actions taken by BJERKEN as alleged herein were done for the benefit of the marital
5 community of BJERKEN and JANE DOE BJERKEN. JANE DOE BJERKEN therefore is joined in
6 this action, pursuant to A.R.S. §44-2031(C), to establish the liability of the marital community for the
7 violations alleged herein.

8 9. AAG, DOUGLAS WARREN, JANE DOE WARREN, MATTHEW WARREN,
9 JOAN DOE WARREN, BJERKEN, and JANE DOE BJERKEN may be collectively referred to as
10 “RESPONDENTS”. JANE DOE WARREN, JOAN DOE WARREN, AND JANE DOE BJERKEN
11 may be collectively referred to as “RESPONDENT SPOUSES.”

12 **III.**

13 **FACTS**

14 10. AAG was incorporated as an Arizona corporation on or about April 17, 1997. Its
15 incorporators and its initial officers and directors were MATTHEW WARREN and DOUGLAS
16 WARREN.

17 11. On or about May 9, 1997, AAG entered into an Indenture (the “AAG Indenture”)
18 establishing the AAG Trust. By the terms of the AAG Indenture, the AAG Trust was to hold and
19 administer the funds raised by AAG’s sales of 18% Secured Promissory Notes (the “AAG Secured
20 Notes”). The initial Trustee of the AAG Trust was Richard C. Yavitt, C.P.A. (“Yavitt”).

21 12. Beginning on or about April 17, 1997, AAG issued, offered, and sold the AAG Secured
22 Notes to investors within or from the State of Arizona. The AAG Secured Notes provided for a rate of
23 return of eighteen percent (18%) per year, payable in quarterly installments to the holders thereof. The
24 AAG Secured Notes were issued for a three-year term, and the entire principal amount of each Note
25 was to be payable on the stated maturity date of each AAG Secured Note. The AAG Secures Notes
26 and the funds from the AAG Secured Notes, as well as funds utilized to pay investor interest, were to be

1 held in escrow accounts established at Security Trust Company (“STC”) and administered by the Trustee
2 of the AAG Trust. (This arrangement will be referred to as the “AAG Note Program.”)

3 13. In connection with their offer and sale of the AAG Secured Notes, RESPONDENTS
4 made available to investors and potential investors a document entitled Limited Offering Memorandum
5 (the “Offering Document”).

6 14. The Offering Document represented that the AAG Secured Notes would be sold as a
7 private offering, and that all investors would be required to be accredited and/or sophisticated investors
8 eligible to participate as investors in a private offering.

9 15. AAG filed a Form “D” with the Securities Division on or about July 10, 1997.

10 16. Yavitt resigned as Trustee of the AAG Trust in the spring of 1998. On or about October
11 28, 1998, BJERKEN entered into an agreement to assume the responsibilities of Trustee of the AAG
12 Trust.

13 17. At the time he assumed responsibility as Trustee of the AAG Trust, BJERKEN had twice
14 previously, in 1991 and in 1996, been ordered to cease and desist from violations of the Securities Act.

15 18. The Offering Document failed to disclose that funds paid into the AAG Trust by investors
16 who purchased the AAG Secured Notes might be utilized to pay interest to investors who had made
17 earlier purchases of the AAG Notes. In fact, funds paid in by later investors were used to make interest
18 payments to earlier investors. The AAG Note Program thus operated as a “Ponzi” scheme.

19 19. Beginning in August 1998, AAG sold unsecured promissory notes (the “AAG Unsecured
20 Notes”) bearing interest at rates from 20% to 30%. In other respects, the terms of the AAG Unsecured
21 Notes were similar to the terms of the AAG Secured Notes.

22 20. AAG stopped making interest payments to investors in the AAG Secured Notes and the
23 AAG Unsecured Notes (collectively, the “AAG Notes”) as of September, 2000.

24 21. On or about February 23, 2001, AAG entered into an agreement with Future Carz, Inc.
25 (“FCI”) (the “Acquisition Agreement”). Pursuant to the Acquisition Agreement, FCI agreed to acquire
26 AAG, and to issue shares in FCI to the holders of the AAG Notes in exchange for the AAG Notes.

1 **(Transactions by Unregistered Dealers or Salesmen)**

2 31. RESPONDENTS offered or sold securities within or from Arizona, while not registered
3 as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

4 32. This conduct violates A.R.S. § 44-1842.

5 **VI.**

6 **VIOLATION OF A.R.S. § 44-1991**

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

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

15 a) RESPONDENTS represented in the Offering Document that they would abide by
16 the terms of the AAG Indenture, which provided for (1) a first lien on automobiles, lease revenues, and
17 other property pledged as security by AAG to secure repayment of the AAG Secured Notes, (2)
18 periodic payments into a sinking fund for repayment of the principal amount of the AAG Secured Notes,
19 (3) appointment of a Trustee to act as agent for holders of the AAG Secured Notes, to exercise the
20 holders' rights with respect to the AAG Secured Notes and their security, and (4) delivery of reports,
21 including annual audited financial statements, to the Trustee. In fact, RESPONDENTS failed to abide by
22 the terms of the AAG Indenture. Among other things, RESPONDENTS failed to make periodic
23 payments to the sinking funds, and failed to provide timely and adequate reports to the Trustee, which
24 resulted in the resignation of the original Trustee.

25 b) RESPONDENTS failed to disclose to investors the exact uses to which the funds
26 received by AAG would be used. In particular, RESPONDENTS failed to disclose that some investor

1 funds could be, and were, used to provide funding for substantial loans from AAG to DOUGLAS
2 WARREN and MATTHEW WARREN, which were never repaid.

3 c) BJERKEN failed to disclose to existing or potential investors that he previously had
4 been ordered on two separate occasions to cease and desist from violations of the Arizona Securities
5 Act.

6 d) BJERKEN acted as Trustee under the AAG Indenture, but failed to discharge his
7 responsibilities to the holders of the AAG Secured Notes, including failure to demand from AAG the
8 reports provided for by the AAG Indenture, including annual audited financial statements.

9 34. This conduct violates A.R.S. § 44-1991.

10 35. RESPONDENTS DOUGLAS WARREN and MATTHEW WARREN directly or
11 indirectly controlled BJERKEN within the meaning of A.R.S. § 44-1999. Therefore, RESPONDENTS
12 DOUGLAS WARREN and MATTHEW WARREN are liable to the same extent as BJERKEN for his
13 violations of A.R.S. § 44-1991.]

14 36. RESPONDENTS DOUGLAS WARREN, MATTHEW WARREN, and BJERKEN
15 made, participated in or induced the sale of a security. Therefore, RESPONDENTS DOUGLAS
16 WARREN, MATTHEW WARREN, and BJERKEN are liable for the above violations of A.R.S. § 44-
17 1991.

18 VII.

19 REQUESTED RELIEF

20 The Division requests that the Commission grant the following relief against
21 RESPONDENTS:

22 1. Order RESPONDENTS to permanently cease and desist from violating the Securities
23 Act, pursuant to A.R.S. § 44-2032;

24 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting
25 from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. §
26 44-2032;

1 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE requests
2 a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer to this Notice
3 of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington,
4 Phoenix, Arizona 85007, within 30 calendar days after the date of
5 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
6 accompany the Answer. A cover sheet form and instructions may be obtained from
7 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
8 www.cc.state.az.us/utility/forms/index.htm.

9 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon the
10 Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
11 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona,
12 85007, addressed to Kathleen Coughenour DeLaRosa.

13 The Answer shall contain an admission or denial of each allegation in this Notice and the original
14 signature of each RESPONDENT, RESPONDENT SPOUSE, or RESPONDENT's or
15 RESPONDENT SPOUSE's attorney. A statement of a lack of sufficient knowledge or information shall
16 be considered a denial of an allegation. An allegation not denied shall be considered admitted.

17 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a part or
18 a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify that part or
19 qualification of the allegation and shall admit the remainder. RESPONDENT or RESPONDENT
20 SPOUSE waives any affirmative defense not raised in the answer.

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

23 DATED this _____ day of _____, 2002.

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25 _____
26 Mark Sendrow
Director of Securities

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AAG Notice of Opportunity for Hearing.doc (KCD)

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