

NEW APPLICATION  
ORIGINAL



0000002898

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2004 APR 30 A 8:16

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

In the matter of:

HCH ENTERPRISE, L.L.C  
5952 West Gail Drive  
Chandler, Arizona 85226

HELEN C. HARTZE and JOHN DOE HARTZE,  
husband and wife  
5952 West Gail Drive  
Chandler, Arizona 85226

MARK KESLER and JANE DOE KESLER,  
husband and wife  
10783 W. Encanto Blvd  
Avondale, Arizona 85323

RESPONDENTS.

DOCKET NO. S-03540A-04-0000

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

Arizona Corporation Commission

DOCKETED

APR 30 2004

DOCKETED BY

**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 HCH ENTERPRISE L.L.C., HELEN C. HARTZE and MARK KESLER have engaged in acts, practices and transactions, which 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

1  
2  
3       2.     HCH ENTERPRISE L.L.C. ("HCH"), whose last known business address was 5952  
4 West Gail Drive Chandler, Arizona 85226 was at all relevant times an Arizona organized limited  
5 liability company. HCH was organized in August of 2002. HELEN C. HARTZE is the statutory  
6 agent and sole member of HCH. HCH is the statutory agent of two investor entities, Ashberry  
7 Apartments, L.L.C. ("Ashberry") and Williamsburg Apartments L.L.C. ("Williamsburg"). HCH is  
8 the Trustee of 1112 Ashberry Trust dated November 14, 2002 and 1221 Jackson Lane Trust dated  
9 November 1, 2002.

10       3.     HELEN C. HARTZE ("HARTZE"), whose last known address was 5952 West Gail  
11 Drive Chandler, Arizona 85226 was at all relevant times the statutory agent and sole member of  
12 HCH. Since December 12, 2001, HARTZE has been a licensed mortgage broker with the Arizona  
13 Department of Banking doing business under the name HCH.

14       4.     JOHN DOE HARTZE is the husband of HARTZE. JOHN DOE HARTZE is  
15 joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of  
16 the marital community.

17       5.     MARK KESLER ("KESLER"), whose last known address was 10783 W. Encanto  
18 Blvd, Avondale, Arizona 85323 was at all relevant times a sales person with HCH. On September  
19 5, 2002, the Commission issued a Temporary Cease and Desist order against a number of  
20 Respondents including KESLER, Docket No. S-03491A-02-0000. KESLER is a named  
21 Defendant in a pending Maricopa County Superior Court action, *Arizona Corporation*  
22 *Commission v. American National Mortgage Partners L.L.C. et al.*, CV2003-005724.

23       6.     JANE DOE KESLER is the wife of KESLER. JANE DOE KESLER is joined in  
24 this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the  
25 marital community.



1           13.     RESPONDENTS formed two Trusts, 1112 Ashberry Trust dated November 11, 2002  
2 and 1221 Jackson Lane Trust dated November 11, 2002. HCH was the Trustee of the two Trusts.  
3 The Borrower would complete documentation transferring the beneficial interests in their property to  
4 the Trust and the investors, through a limited liability company created by RESPONDENTS, would  
5 become the second beneficiary on the Trust. The Borrower also signed a promissory note setting  
6 forth the terms of repayment and interest rate.

7           14.     Although both Ashberry and Williamsburg were represented to be member-managed  
8 L.L.C.'s, the investors did not have management control over the L.L.C.'s. According to the  
9 documents provided to the investors, the principal place of business of the L.L.C.'s was HCH. The  
10 books and records of the L.L.C.s were located at HCH. HCH was the trustee of the trusts and the  
11 payments from the Borrower were to be made to HCH. Most of the funds raised from investors,  
12 whether they were members of Ashberry or Williamsburg, were deposited into the HCH bank  
13 accounts. HARTZE was the sole signatory on the HCH account.

14           15.     According to the investors and the offering documents, the investment would be  
15 secured by real property. However, the final documents signed by the Borrower and the Trustee  
16 indicate that the documents would not be recorded unless the Borrower defaulted on the loans.

17           16.     At no time were investors informed that they were to replace HCH as the Trustee of  
18 the Trusts. The investors were not informed that it was their responsibility to record their interest in  
19 the real property if there was a default by the Borrower. In fact, the investors did not know their  
20 interests would not be recorded against the property until or unless there was a default. The investors  
21 were not provided complete investor records to allow them to independently contact the other  
22 members of the L.L.C. in order to take control of the L.L.C. and complete its business activities.

23           17.     The Borrower sought \$405,000 from the investors in the Ashberry investment.  
24 Starting in November of 2002 through January of 2003, the Ashberry investment raised  
25  
26

1 approximately \$245,000 from about seven investors. The investment was to be secured by an interest  
2 in an apartment complex located in Columbus, Ohio.

3 18. In November of 2002, the Borrower sought \$115,000 from the investors. The  
4 Williamsburg investment raised approximately \$115,000 from two investors in November of 2002.  
5 The investment was to be secured by an interest in an apartment complex located in Middletown,  
6 Ohio.

7 19. The Borrower defaulted on the notes and the investors have not received a return of  
8 their investment nor has their interest in the real property been recorded to secure their interests.

9 **IV.**

10 **VIOLATION OF A.R.S. § 44-1841**

11 **(Offer or Sale of Unregistered Securities)**

12 20. From about November of 2002 through about February of 2003, RESPONDENTS  
13 offered or sold securities in the form of notes and/or evidence of indebtedness, within or from  
14 Arizona.

15 21. The securities referred to above were not registered pursuant to the provisions of  
16 Articles 6 or 7 of the Securities Act.

17 22. This conduct violates A.R.S. § 44-1841.

18 **V.**

19 **VIOLATION OF A.R.S. § 44-1842**

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

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

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

24 ...

25 ...

26

1 VI

2 VIOLATION OF A.R.S. § 44-1991

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

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

11 a) RESPONDENTS misrepresented to offerees and investors that their investment was  
12 secured by an interest in real property when, in fact, the Borrower and RESPONDENTS agreed that  
13 the investors' interest in the real property would only be recorded if the Borrower defaulted on the  
14 loan.

15 b) RESPONDENTS failed to disclose to offerees and investors that the investors would  
16 have to operate and manage the limited liability company instead of the RESPONDENTS.

17 c) RESPONDENTS failed to disclose to offerees and investors that HCH was separate  
18 from ANMP.

19 d) KESLER failed to disclose to offerees and investors that he was under a Temporary  
20 Cease and Desist Order prohibiting him from offering and selling securities in violation of the  
21 Arizona Securities Act.

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

23 27. RESPONDENT HARTZE directly or indirectly controlled HCH and KESLER within  
24 the meaning of A.R.S. § 44-1999. Therefore, RESPONDENT HARTZE is liable to the same extent  
25 as HCH and KESLER for their violations of A.R.S. § 44-1991.



1 Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona  
2 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover  
3 sheet must accompany the request. A cover sheet form and instructions may be obtained from  
4 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
5 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

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

11 Persons with a disability may request a reasonable accommodation such as a sign language  
12 interpreter, as well as request this document in an alternative format, by contacting Yvonne L.  
13 McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-  
14 mail [ymcfarlin@cc.state.az.us](mailto:ymcfarlin@cc.state.az.us). Requests should be made as early as possible to allow time to  
15 arrange the accommodation.

#### 16 XIV.

#### 17 ANSWER REQUIREMENT

18 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE  
19 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer  
20 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,  
21 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of  
22 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must  
23 accompany the Answer. A cover sheet form and instructions may be obtained from  
24 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
25 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

