

1 **ARIZONA CORPORATION COMMISSION**

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5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

6 **IN AND FOR THE COUNTY OF MARICOPA**

7 ARIZONA CORPORATION COMMISSION,)

8 Plaintiff,)

9 v.)

No. CV 2004-024733

10 DAVID DUANE NUTTER and JANE DOE)

COMPLAINT

11 NUTTER, husband and wife; NORTH)

(Civil—Contempt)

12 AMERICAN INSURANCE SERVICES, L.L.C.,)

an Arizona limited liability company; JANE)

13 DOES I-V.)

14 Defendants.)

15)
16 For its Complaint against Defendants, Plaintiff, the Arizona Corporation Commission,
17 pleads as follows:

18 **PARTIES, JURISDICTION, AND VENUE**

19 1. Plaintiff, the Arizona Corporation Commission (“ACC”), is a governmental entity
20 charged with enforcing the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities
21 Act”).

22 2. Defendant, David Duane Nutter (“Nutter”) is an individual who resides in Maricopa
23 County, Arizona. Nutter has caused acts to occur within the State of Arizona that give rise to this
24 action.

25 3. Defendant Jane Doe Nutter is the wife of Defendant Nutter. Defendant Jane Doe
26 Nutter is named herein solely for the purpose of determining the liability of the marital community

1 for the acts of Defendant Nutter. The true name of Defendant Jane Doe Nutter is presently
2 unknown; Plaintiff will seek leave of the court to amend this Complaint when the true name of
3 Defendant Jane Doe Nutter is determined.

4 4. Defendant, North American Insurance Services, L.L.C. (“North American”) is an
5 Arizona limited liability company, organized on or about June 6, 1997, with its registered address at
6 8126 North 23rd Avenue, Suite H, Phoenix, Arizona 85021. Defendant Nutter is the Statutory Agent
7 and the Manager for Defendant North American.

8 5. The ACC brings this action pursuant to A.R.S. §§ 44-2032. Venue is proper in
9 this County pursuant to A.R.S. §§ 44-2031(B).

10 **GENERAL ALLEGATIONS**

11 6. Defendants have violated an ACC order, which constitutes a violation of the
12 Securities Act. On August 14, 2001, the Arizona Corporation Commission, Securities Division
13 (“Securities Division”) filed a Notice of Opportunity for Hearing Regarding Proposed Order to
14 Cease and Desist, For Restitution, For Administrative Penalties and for Other Affirmative Action
15 (“Notice”) against Defendants Nutter and North American. The Notice alleged that the Defendants
16 violated the Securities Act by offering and selling promissory notes to at least sixteen (16) people
17 who invested approximately \$750,000. The Notice further alleged that the terms and the interest
18 rates of the promissory notes varied, depending on the client to whom they were sold.

19 7. On May 1, 2002, the ACC approved entry of an Order To Cease and Desist, Order
20 Of Restitution, Order For Administrative Penalties and Consent To Same by: David Nutter and
21 North American Insurance Services, L.L.C. (“Consent Order”) in connection with the Securities
22 Division’s action against Nutter and North American. (See Exhibit “A”)

23 8. The Consent Order required the Defendants 1) to cease and desist from offering and
24 selling promissory notes, 2) to cease and desist from extending or “rolling over” any existing
25 promissory notes, and 3) to cease and desist from violating the Securities Act.

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1 9. Furthermore, Defendants were ordered to pay restitution in the amount of \$613,000,
2 plus interest in the approximate amount of \$177,300 at the rate of the issued promissory notes,
3 from the date of each investment until paid in full. The ACC also ordered Defendants to pay an
4 administrative penalty of \$20,000 and submit an annual report to the Securities Division listing all
5 products sold by the Defendants during the year until the restitution and penalties provided in the
6 Consent Order were paid in full.

7 10. The Consent Order required the Defendants to pay restitution to the State of Arizona
8 which would be deposited into an account held by the Office of the Arizona Attorney General. The
9 Office of the Arizona Attorney General would then distribute the funds on a pro rata basis to the
10 investors until they are paid in full.

11 11. On at least one occasion following entry of the Consent Order, Defendant Nutter
12 approached an investor, included in the group of investors covered by the Consent Order, and
13 asked the investor to roll over his note to extend the repayment date. The investor refused and, to
14 date, has not received any payment for his original loan or interest accrued from Defendants Nutter
15 and North American.

16 12. On at least six (6) occasions, Defendants Nutter and North American offered and
17 sold promissory notes in violation of the Consent Order.

18 a. On July 30, 2003 and August 6, 2003, Nutter and North American offered and sold
19 two (2) promissory notes in the amounts of \$15,000 and \$5,000 to residents of New
20 Mexico. At the time of the sale, Nutter and North American conducted business out
21 of an office in Phoenix, Arizona. To date, the investors have not received payment
22 for their original loans nor interest accrued from either Defendant.

23 b. On September 5, 2003, Nutter and North American offered and sold a promissory
24 note in the amount of \$9,000 to an Arizona resident. Shortly after providing the
25 funds, the investor requested Nutter and North American to return the funds. In or
26

1 about October 2003, Defendants Nutter and North American returned the funds to
2 the investor.

3 c. On or about October 30, 2003 and November 13, 2003, Nutter and North American
4 offered and sold two (2) promissory notes to an Arizona resident in the amount of
5 \$18,000 each. Nutter and North American repaid the investor the promissory notes'
6 principal amount and interest.

7 d. On or about February 16, 2004, Defendants Nutter and North American offered and
8 sold a promissory note in the amount of \$6,000 to an Arizona resident in violation
9 of the Consent Order.

10 **COUNT ONE**
11 **VIOLATION OF A.R.S. § 44-2032**
12 **(Contempt of Administrative Order)**

13 13. The ACC incorporates by reference all allegations set forth in paragraphs 1 through 12
14 of this Complaint.

15 14. From about May 1, 2002, through the present, Defendants violated the Consent
16 Order by:

- 17 a. Continuing to offer and sell promissory notes that were neither registered nor
18 exempt from registration;
- 19 b. Continuing to sell promissory notes without being registered as dealers and/or
20 salesmen;
- 21 c. Offering and selling promissory notes after the Consent Order prohibited him from
22 doing so; and
- 23 d. Requesting an investor to rollover or extend his promissory notes.

24 15. This conduct violates A.R.S. § 44-2032.
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COUNT TWO
REPAYMENT OF MONIES
(Pursuant to §§ 44-2032)

16. The ACC incorporates by reference all allegations set forth in paragraphs 1 through 12 and 14-15 of this Complaint.

17. Pursuant to A.R.S. §§ 44-2032, the ACC requests this Court to enter an Order restoring money to current investors which Defendants acquired as a result of their violation of the Securities Act.

WHEREFORE, the ACC prays this Court to enter judgment as follows:

1. Enter an order against the Defendants for contempt of the ACC Consent Order, pursuant to A.R.S. § 44-2032(1);

2. Order restoration of money to investors which the Defendants acquired in violation of the Consent Order, pursuant to A.R.S. § 44-2032(3);

3. Order the Defendants to pay a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation of the ACC Consent Order, as the Court deems just and proper, pursuant to A.R.S. § 44-2032(1)(a);

4. Order the Defendants to pay a civil penalty of up to five thousand dollars (\$5,000) for each violation of the Securities Act, as the Court deems just and proper, pursuant to A.R.S. § 44-2037;

5. Order Defendants 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;

6. Order Defendants to pay the ACC's reasonable costs, including attorney fees, pursuant to A.R.S. § 44-2032(1)(b); and

7. Order any other relief the Court deems appropriate.

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Dated this 15th day of December, 2004.

ARIZONA CORPORATION COMMISSION

By /s/ Rachel Strachan
Rachel Strachan
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007
Attorney for the Arizona Corporation
Commission

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EXHIBIT "A"