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COMMISSIONER

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COMMISSIONER



ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS  
EXECUTIVE SECRETARY

SECURITIES DIVISION  
(602) 542-4242  
(602) 255-2600  
FAX: (602) 255-2617

October 29, 1992

J.I.M. Choate, Esq.  
173 Hubbard Avenue  
Stamford, CT 06905-4814

RE: Collision Automotive Repair Services, Inc.

Dear Mr. Choate:

On the basis of the facts set forth in your letters of September 21, 1992 and October 21, 1992 including facts set forth in the SEC letter of June 15, 1992 referred to in your letters, and in reliance upon your opinion as counsel, the Securities Division (the "Division") will not recommend enforcement action for violation of the Securities Act of Arizona (the "Act") should Collision Automotive Repair Services, Inc. ("CARS") offer and sell Class A common stock as set forth in your letters. The Division renders no opinion with respect to the Class B shares at this time.

In concurring with your opinion that the Class A common stock offered by CARS does not constitute "securities" for purposes of the registration requirements of the Act, the Division has noted particularly your representations that CARS is a consumer cooperative and its Class A common stock merely evidences membership interests in CARS, and that the Class A common stock does not possess most of the characteristics of a security, such as unrestricted transferability, ordinary dividend rights, and that the potential appreciation in value of the Class A common stock is not significant.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person.

To the extent that the transactions do not take place as set forth in your letters to the Division, or a material change in circumstances causes the Class A common stock to be deemed "securities" for purposes of the Act, then the anti-fraud provisions of the Act would be applicable ab initio.

J.I.M. Choate  
October 29, 1992  
Page 2

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

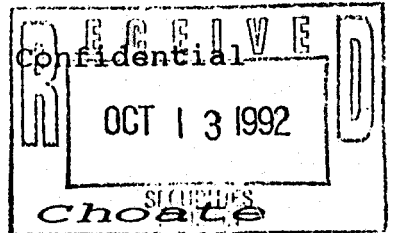
A handwritten signature in black ink, appearing to read "D. Ridgell Harris". The signature is fluid and cursive, with a large initial "D" and "R".

DEE RIDDELL HARRIS  
Director of Securities

DRH:lb

Attachment

Arizona - CARS (TM)



173 Hubbard Avenue  
Stamford, CT 06905-4814

J. I. M. Choate

1992 Sep 21 (Mon)

Michael G. Burton, Sr., Assistant General Counsel  
Securities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Subject: Delaware Cooperative  
nonprofit corporation trade  
association for body shop owners -  
Collision Automotive Repair  
Services, Inc. ("CARS" (TM)) no-  
action request

Dear Commissioner:

Thank you for the information, of July 13, 1992, on exemptions and applicants. Your review, issued pursuant to Section 44-1843(A)(6) of your securities act, does not appear to apply to CARS. Nevertheless, we may persuade you to exclude the memberships from the definition of securities altogether. Please provide an interpretive opinion or no action letter that the memberships for CARS are not securities or that CARS is not selling securities, or qualifies for an exemption from registration for offers and sales of securities. If you are unable to so do, please advise, so I may explore alternatives.

Corporate background:

A Delaware nonprofit mutual benefit cooperative corporation trade association, CARS, is organizing members from auto body repair shops. As a consumer coop, members buy products, such as paint or parts, at competitive (or at-cost) prices. Members join worker's compensation, liability and other business insurance pools. Members receive educational and other services. The business is exclusively members only. Members control the company on a one vote per share basis. CARS complies with Subchapter "T" of the Internal Revenue Code, in that surplus is distributed on the basis of voluntary patronage or use, and not on the amount of capital contributed. Losses will be apportioned among members on an equitable basis.

The Bylaws allow sales or transfers of shares only with the prior written consent of the Board of Directors (2.4) A legend noting this consent requirement, as well as restriction on pledge or borrowing on the stock, and the right of the CARS to offset

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redemption payments against amounts owed by the member to CARS, will appear on the certificates. A member's one share of no-par class A stock costs \$600. A member may quit and redeem the share to CARS at its book value as of the prior fiscal year close.

Securities and Exchange Commission No Action

On June 15, 1992, CARS' wrote the Office of the Chief Counsel Division of Corporation Finance Securities and Exchange Commission in Washington D.C. CARS outlined its corporate status from the Bylaws and Charter, and requested a no-action letter, which was issued by the Chief Counsel on July 7, 1992. The request included the following legal analysis, quoted in part:

It is our opinion that the Class A membership stock certificates in the Co-Op do not constitute "securities" within the meaning of Section 2(1) of the [Securities Act of 1933] and are, therefore, not subject to registration.

. . . . In United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975), the United States Supreme Court held that a share of "common stock" which entitled the purchaser to lease an apartment in a subsidized, non-profit cooperative housing project did not constitute a "security" within the meaning of the 1933 Act. . . .

. . . . B. Rosenberg & Sons, Inc. v. St. James Sugar Cooperative, 447 F.Supp. 1 (E.D. La. 1976), . . . involved a sugar grower's cooperative organized to process sugar cane, market the grower's products, and obtain for its members favorable prices for supplies and equipment. Despite the commercial nature of this cooperative . . . the certificates were not securities. . . . "It has none of the characteristics associated with the concept of a security. It is non-negotiable, bears no dividends, can only be owned by a member and can only be transferred with approval of the board of directors." Id. at 3.

The proposed membership certificates in [CARS are similar]. . . surplus is to be distributed on the basis of patronage or use and not on the amount of capital contributed. The certificates can only be transferred or assigned under certain limited circumstances requiring prior written consent of the Co-op in accordance with its Bylaws. Inasmuch as the certificates cannot be transferred, it follows that the membership certificates cannot be pledged or hypothecated. Each member is entitled to one vote on matters that come before the Co-op members. Because redemption may occur only upon

termination of membership, any potential appreciation in value the member might realize would be offset by the lost opportunity for future savings and services. . . .

In addition . . . the activities of CARS, as set forth herein, are particularly similar to the activities of Kentucky Pharmacy Services Corp., . . . [no-action released June 6, 1990] . . . [it] was a cooperative which provided, among other benefits to its pharmacist members, both cost savings (by virtue of a group buying arrangement) and revenue enhancement (by virtue of the negotiation of contracts with third party insurance companies and health maintenance organizations for the provision of pharmacy services by the members of the cooperative). See also, Central Florida Medical Associates, Inc. (April 22, 1985) [no action] . . . a group of physicians . . . desired to develop and participate in a healthcare program known as a preferred provider organization (PPO) sponsored by the physicians and a local hospital. Under this arrangement, the physicians would benefit from the development of the PPO by virtue of being paid for their provision of health care services to the beneficiaries of the PPO, not by virtue of any economic interest in the PPO.

Insofar as its member revenue-enhancing function is concerned, CARS' activities also appear to us to be analogous to those of a cooperative comprised of member physicians, known as an individual practice association ("IPA"), which contracts, for the benefit of its members, with a for-profit health maintenance organization ("HMO") for the provision of member medical services to HMO subscribers. See Certified Physicians of Indiana, P.C. (June 4, 1990), Queens-Long Island Medical Group, P.C. (November 6, 1990), Kingsboro Medical Group, P.C. (October 27, 1989), Arizona Dental IPA, Lid. (May 1, 1987), Desert Physician Association, Inc. (June 23, 1986), Maimonides Associates, Inc. (October 8, 1986), Northwest Practitioners Associates, Inc. (October 16, 1986), IPA of Richmond County, Inc. (November 17, 1986) and St. John's Mercy Medical Center (May 29, 1985). . . .

#### Local Law Analysis

Your law also appears to exclude the membership from the definition of securities, based on the same reasoning as the SEC. Enclosed is the \$200 required by A.R.S. 44-1861(L).

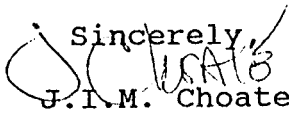
In summary, as stated in the letter to the SEC quoted in part, CARS' memberships are not securities subject to your securities

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law. Or, alternatively, the memberships are exempt from registration by your state laws.

I appreciate your help in this matter. I enclose copies of bylaws and charters. Please advise.

Sincerely,

  
J.I.M. Choate

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Enclosure: SEC Letter  
Bylaws/Charter  
\$200 fee enclosed

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173 Hubbard Avenue  
Stamford, CT 06905-4814

J.I.M. Choate  
Attorney Before the Bars of  
New York and Oklahoma  
203-967-8339  
1992 Oct 21 (Wed)

Leslie Block, Attorney  
Arizona Securities Division  
234 North Central Ave. Ste 425  
Phoenix, Arizona 85004

Subject: Delaware Cooperative  
nonprofit corporation trade  
association for body shop owners -  
Collision Automotive Repair  
Services, Inc. ("CARS" (TM)) no-  
action request

Dear Attorney:

Thank you for the advice of October 21st on the application for an interpretive opinion or no action letter that the memberships for CARS are not securities or that CARS is not selling securities, or qualifies for an exemption from registration for offers and sales of securities. I am enclosing the 7 page letter of June 15, 1992 to the SEC, which I had extracted in my August 29th letter to you. In addition, I will address your questions.

Corporate background:

A Delaware nonprofit mutual benefit cooperative corporation trade association, CARS, is organizing members from auto body repair shops. A member's one share of no-par class A stock costs \$600. There is no incentive to purchase more than one share, as all patronage is based on use, not capital investment. The Bylaws allow sales of Class B shares to non body shop owners, as further detailed in the June 15, 1992 letter at page 2, which comments that there "is no intention to issue class B" at this time.

The educational and insurance services are outlined at page 3 of the June 15th letter. There are three divisions which will assist small businesses in solving their problems.

Memberships are sold directly by the Cooperative's employees or agents through word of mouth or direct mail. No commissions are charged. Between one and two hundred members are located in Oklahoma, Arkansas and Missouri. We have no-action or similar responses from fourteen states, in addition to the Securities and Exchange Commission No Action letter of July 7th, 1992.

J.I.M. Choate

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I appreciate your help in this matter. Please advise.

Sincerely,  
*J.I.M. Choate*  
J.I.M. Choate

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Enclosure: June 15, 1992 letter to SEC