ACC declares fraud in Chamber case; Kicks it back for restitution amount

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PHOENIX – After a vigorous debate on the finer points of fraud, the Arizona Corporation Commission (ACC) voted 2-1 in an open meeting Tuesday to add fraud to a list of securities law violations the Prescott-based Chamber Group allegedly committed.

Commissioner Jim Irvin opposed the motion without comment.

In a second motion, the ACC stopped short of approving an administrative law judge's recommended order imposing fines and sanctions against the company (which has re-named itself "SeniorLife Asset Management") and its three principals – Joseph, Travis and Tyson Hiland – for violating various securities laws because the commissioners questioned the amount that the Hilands actually owe investors.

According to the ACC's securities division, which has prosecuted the year-long case, the Hilands sold nearly $16 million worth of questionable investment products to hundreds of investors – many of whom live in the Prescott and Mesa areas – between January 1999 and December 2000. The four products are:

• Brokered certificates of deposit (CDs), which have longer maturity dates than traditional bank CDs.

• Tax lien settlements, where investors buy portions of real estate in tax default.

• Viatical settlements, where investors buy portions of life insurance policies from terminally ill patients who need cash to pay for medical bills.

• Money voucher machines, which investors purchase and which offer cash vouchers to customers, for a fee, from their credit cards.

Even though the securities division received the figure of $16 million from the Hilands, the ACC voted unanimously during Tuesday's hearing that the two sides need to meet in an evidentiary hearing to hammer out a firm number for restitution and/or rescission before they will approve the judge's proposed order.

Although Administrative Law Judge Marc Stern accused the Hilands of "negligence" and "ineptitude" for not learning more about the four products before they began selling them, he contended that they were not in violation of state statute 44-1991 (securities fraud).

Commissioner Marc Spitzer questioned Stern's decision to omit the fraud violation – based on the Hilands' lack of knowledge about the products – even though their negligence appeared to be fraudulent. "Is stupidity a defense…?" he asked.

Stern replied that, in using his judicial discretion, he did not think the evidence in the case – including conflicting testimony during a week-long hearing in May – conclusively proved fraud.

Spitzer challenged that notion and suggested that Stern's decision could open a loophole in the law whereby people committing fraud could shake off the fraud tag just by claiming ignorance.

Likewise, Stern retorted, if the ACC does not allow for some discretionary leeway in their decisions, then they could wind up ruling fraud in every case.

The Hilands' Scottsdale-based attorneys, John Titus and David Jordan, supported the judge's discretion and asked the ACC for leniency. In their written exceptions to the judge's proposed order, the attorneys argued that none of the four investment products that the Hilands were selling qualify as "securities" under the state's Securities Act.

Furthermore, they said that the ACC was considering a "career-ending decision" for the Hilands, since the state's Department of Insurance would likely suspend their licenses to sell insurance if the ACC included the fraud violation in their final order.

"Every once in a while a well-intentioned person runs afoul of the Securities Act," Titus said. "I think you need to consider what's fair under the circumstances."

While he agreed that the ACC needed to be "fair and just," Spitzer told the lawyers that the heart of the issue was the Hilands' material misrepresentations and omissions of fact about the products.

But Jordan contended that the severity of the ACC's decision out-weighed the Hilands' level of negligence and that the ACC should omit the fraud violation from their order.

Spitzer admitted that state statute 44-1991 is different than common law fraud, and ACC Chairman Bill Mundell pointed out that the ACC deals in administrative law, rather than criminal or civil law.

Alex Vakula, a Prescott-based attorney representing Don Elliott of Chino Valley in a civil lawsuit against the Hilands, asked the ACC to include the fraud violation in their order.

"The investors are looking for any help they can get," he said.

Furthermore, Vakula said, when those investors – many of whom are elderly and living on fixed incomes – decided to purchase investments through the Chamber Group, they made a "retirement-ending decision."

"I believe the Chamber Group needs to be held to the same standard as everyone else," he said.

Joseph Hiland, who attended the hearing with his lawyers, declined to comment.

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