BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Against: CASA SIMPATICA, LLC, and SUZY BROWN, Respondents.	OAH No. L2005050447

DECISION

On June 3, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in San Diego, California.

Ursula L. Clemons, Corporations Counsel, represented complainant Wayne Strumpfer, Acting California Corporations Commissioner (the Commissioner) of the Department of Corporations (hereinafter the department).

Robert M. Vantress, Esq., represented respondents Suzy Brown, who was present, and Casa Simpatica, LLC. (Respondent Brown will be referred to as Ms. Brown herein.)

The matter was submitted on June 3, 2005. Administrative Law Judge Thomas' proposed decision dated July 5, 2005, ordered rescission of the Desist and Refrain Order and dismissal of the Complaint in Support of Desist and Refrain Order of the Commissioner.

On October 14, 2005, the Department of Corporations rejected the proposed decision to decide the case itself under the provisions of the Government Code section 11517(c)(2)(E). The parties submitted written arguments to the Department Corporations prior to December 2, 2005.

FACTUAL FINDINGS

1. On April 15, 2005, the Commissioner issued a Desist and Refrain Order pursuant to Corporations Code section 25532 against respondents. The Order directed respondents to cease the further offers or sales of securities in the form of stock and promissory notes unless and until qualification of the securities has been made under the law or unless exempt. Respondents timely submitted a written request for a hearing.

ORDER

The Complaint in Support of Desist and Refrain Order of the Commissioner dated May 19, 2005, issued against respondents Casa Simpatica, LLC and Suzy Brown, is dismissed, and the Desist and Refrain Order dated April 15, 2005, is rescinded.

This Decision shall become effective on December 22, 2005.

IT IS SO ORDERED December 22, 2005.

ANTHONY LEWIS
Acting Chief Deputy Commissioner
Department of Corporations

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Against: CASA SIMPATICA, LLC, and SUZY BROWN, Respondents.	OAH No. L2005050447

PROPOSED DECISION

On June 3, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in San Diego, California.

Ursula L. Clemons, Corporations Counsel, represented complainant Wayne Strumpfer, Acting California Corporations Commissioner (the Commissioner) of the Department of Corporations (hereinafter the department).

Robert M. Vantress, Esq., represented respondents Suzy Brown, who was present, and Casa Simpatica, LLC. (Respondent Brown will be referred to as Ms. Brown herein.)

The matter was submitted on June 3, 2005.

FACTUAL FINDINGS

1. On April 15, 2005, the Commissioner issued a Desist and Refrain Order pursuant to Corporations Code section 25532 against respondents. The Order directed respondents to cease the further offers or sales of securities in the form of stock and promissory notes unless and until qualification of the securities has been made under the law or unless exempt. Respondents timely submitted a written request for a hearing.

2. The Commissioner acted in response to a complaint filed with the department by a citizen who had attended a dinner party at a private residence in Olivenhain, California, on April 2, 2004. Olivenhain is an unincorporated area of the City of Encinitas, in northern San Diego County, and is rural and residential in character. A woman named Julie Werner asked several friends who lived in Olivenhain and Carlsbad if they would be interested in meeting Ms. Brown, who was new to the area. Ms. Werner described Ms. Brown as a scientist, highly educated and involved in some way with spiritualist Deepak Chopra. Six women expressed

interest, and attended a dinner party for eight at the home of Georgia Griffiths and Colleen Kendall. In addition to the hostesses, Ms. Werner and Ms. Brown, the group also included Helen Lesnick and Valerie Pichney.

3. Ms. Brown was of the belief that the dinner party was for the purpose of enabling her to meet professional women who resided in the Olivenhain neighborhood where she intended to build, through Simpatica, LLC, an alcohol and drug addiction rehabilitation residential facility. Knowing that there would likely be opposition to such a project in a residential area, Ms. Brown desired to meet influential neighbors and build support within the community for her project. In advance of the dinner party, Ms. Werner Ms. Brown that the women who were to attend were all educated, professional and spiritual women. She informed Ms. Brown that Georgia Griffiths was a software engineer and CEO of her company, which designed communications programs for the military. Ms. Brown was informed that Colleen Kendall had been a stockbroker, that Helen Lesnick was a movie producer, writer and director, and that Valerie Pichney was a producer and tax attorney who had graduated Magna Cum Laude from Georgetown University Law Center.

4. In advance of the dinner party, the hostesses and guests other than Ms. Werner and Ms. Brown were of the belief that the purpose of the dinner party was purely social and to welcome a newcomer to the area.

5. Ms. Brown arrived with Ms. Werner carrying a copy of a 33-page prospectus for her project, Casa Simpatica. The first eight pages of the document focused on descriptions of the building, including drawings of the completed project. Text describing a partnership with the Chopra Center, the services, activities and recovery program to be offered, as well as the anticipated staffing, followed. A timeline predicted completion of the project by April of 2005, and a representation was made that the promoters had complied with all zoning and licensing regulations. Approximately the last half of the document dealt with market and financial data, including investment model descriptions, proforma cash flow spreadsheets and predicted rates of return. Because Ms. Brown attended the party with the intent of winning support for her project, she brought one copy of the prospectus because it included pictures and descriptions of the project that she felt the group might like to see. The prospectus brought to the party was outdated in some respects.

6. Hostesses and attendees Griffiths, Kendall, Lesnick and Pichney all testified that because their expectations of the party were that it was to be a purely social occasion, each was surprised to see and hear Ms. Brown launch into a description of her project. The hostesses were particularly "stunned" and "appalled" that Ms. Brown would use the occasion of the party to pitch her project. The hostesses and guests who testified believed that Ms. Brown was attempting to solicit investments in the project. However, no one expressed any unhappiness while at the party. Indeed, many questions were asked of Ms. Brown before, during and after dinner. The questions included what the minimum investment was, who the existing

investors were, and whether the appropriate permits had been obtained. In response to a question, Ms. Brown informed those present that her own family members were investors. Some at the party were unhappy with some of the answers and skeptical of the rates of return mentioned in the prospectus. Although Colleen Kendall described Ms. Brown's presentation as a "soft sell," respondent did not ask any individual at the party to invest, nor did she verbally characterize the offering as a "great investment opportunity."

7. Ms. Brown left the single prospectus at the home when she departed. Georgia Griffiths, who was very active in Olivenhain civic affairs and curious about the project, asked Ms. Brown to send her an email that included more information. On April 3, 2004, Ms. Brown sent an email to all of the women who had attended the party. The email was worded as follows:

> Hi girls,
>
> Thank you all for your company last night and the great conversation. You are definitely "my kind of people." Even more wonderful that you're in my backyard. Thank you so much Colleen for preparing such a healthy dinner.
>
> I look forward to seeing you all again soon. I'll have to invite you over to my trailer in two-somes since my humble abode will only hold a few people at a time. Check out the live webcam if you want to watch progress on the construction site: http://www.casasimpatica.com/
>
> If you wish to view the Business Prospectus, it is available online at: http://216219221.04/CasaSimpaticaProforma.pdf.
>
> Suzy

Ms. Griffiths replied immediately with a polite and friendly email, inquiring about project details such as parking.

8. Some time after April 2, 2004, local Olivenhain residents formed a non-profit public benefit organization called Advancement of Quality Care, Inc., dba Residents for the Preservation of Olivenhain, to oppose respondents' project. A civil action was filed against respondents and the group sought a temporary restraining order and preliminary injunction to stop construction of the project. Colleen Kendall provided a declaration in support of the request for injunction, which was denied following a hearing in the San Diego Superior Court on November 5, 2004.

9. No dinner party hostess or guest invested in Casa Simpatica.

10. For reasons not detailed at the hearing, Ms. Brown has converted the Olivenhain project to a personal guest residence and plans to build the rehabilitation facility in a commercial area.

11. Investment interests in Casa Simpatica, which have been sold to approximately 15 people in the form of stock and promissory notes, are securities within the meaning of Corporations Code section 25110. The securities that are offered for sale by respondents are offered by means of issuer transactions within the meaning of Corporations Code sections 25110, 25010 and 25011. No permit has issued and the securities have not been qualified by the Commissioner for sale in this State. The prospectus for Casa Simpatica that was shown to the dinner party attendees in April of 2004 indicates that $2,247,606 in additional funds was being sought.

12. On or about March 3, 2004, respondents filed a claim for exemption from qualification pursuant to Corporations Code section 25102, subdivision (f), on the basis that no public offer was involved, that is, less than 35 people were being solicited to invest.

13. Including all family members and others who have invested, and including the seven persons present at the dinner party on April 2, 2004, fewer than 25 people have been solicited to invest.

LEGAL CONCLUSIONS

1. Corporations Code section 25110, makes unlawful the offer or sale in this State of any security in an issuer transaction unless the sale has been qualified by the Commissioner, or unless such security is exempt from qualification.

2. If, in the opinion of the Commissioner, the sale of a security is subject to qualification and is being offered or sold in this State without first being qualified, the Commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made pursuant to law. (Corp. Code, § 25532, subd. (a).)

3. An offering is exempt from qualification as a security if sales are made to no more than 35 people, and the following additional qualifications are satisfied: (a) All purchasers either have a preexisting personal or business relationship with the offeror, or by reason of their business or financial experience or the business or financial experience of their professional advisors, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction; (b) Each purchaser is purchasing for his or her own account and not for the purpose of further distribution of the security; and (c) The offer and sale is not accomplished by the publication of any advertisement. (Bus. & Prof. Code, § 25102, subd. (f).)

4. Corporations Code section 25017, subdivision (b), provides that an offer or offer to sell includes "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value."

5. The Commissioner issued "Guidelines for Determining When Securities Are Being 'Offered to the Public.'" Known as Release No. 5-C, the guidelines recognize that cases "must be considered individually in each case, based upon the special circumstances of that case. In this sense, the question is mixed question of fact and law." Six different factors are listed as relevant to the determination:

(a) The number and character of offerees and investors. A small number of offerees is indicative of an offering that is not made to the public, unless the offerees are chosen indiscriminately or by means of general public advertising. This criterion in the guidelines also references California Code of Regulations, title 10, section 260.102.2 (Rule 260.102.2), as applicable to finding an exemption under Corporations Code section 25102, subdivision (f). That regulation requires that the offer be made to not more than 25 persons, that sales are consummated to no more than 10 people, and that all of the offerees either have a preexisting relationship with the offeror, or by reason of their business or financial experience would be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(b) The relationship of the offerees to each other. It may be significant that the offerees have preexisting relationships to one another in determining the character of the offering, unless the initial appeal to the group was of a public nature. The relationship may be by blood, friendship or a business association.

(c) The relationship between the issuer and the offerees. A close relationship between the issuer and the offerees may indicate that purchases are made in reliance on the confidence the purchasers have in the issuer personally. The fact that investors are relative strangers to the issuer is indicative of a public offering.

(d) The size of the offering. An offering large enough to likely lead to redistribution to the public is significant indicia of a public offering.

(e) The manner of the offering. Considered "[p]erhaps the most significant single factor," the guidelines suggest that if the initiative for the investment meeting was taken by the purchasers, it is more likely to be considered a private offering. It is also significant to consider, if the offeror initiated the meeting, whether the means used to bring about the meeting was likely to bring attention to the security to the attention of a large and indiscriminately constituted group, such as by the use of the public press, trade publications, radio or television, mass mailings or in open public meetings.

(f) The character of the security offered. Shares of stock and evidences of indebtedness are more likely to be viewed as the subject of a public offering than securities containing unusual or non-commercial arrangements that make them desirable only to a relatively limited group of selected investors.

6. A consideration of the factors set out in the Commissioner's guidelines in this matter leads to the conclusion that respondents did not make a public offering to sell securities on April 2, 2004. The group was very small and did not come together as the result of any public or indiscriminate advertising. The individuals in the group had a preexisting relationship to one another. The group consisted of well-educated businesswomen, and Ms. Brown had sufficient reason by virtue of Ms. Werner's prior briefings to believe that they had the capacity to protect their own interests.

7. On the subject of which party initiated the meeting, the evidence supports a finding that the arrangements were mutually agreed upon, and therein lays the essence of this case. It is unfortunate that Ms. Werner did not testify at the hearing[1] because she may have been the cause of what became a misunderstanding of monumental proportions. As the person who acted as the intermediary, Ms. Werner encouraged Ms. Brown to believe that a group of prominent local citizens were eager to hear about her project. Ms. Brown attended not to sell shares in the limited liability company, although she readily admitted that she would have welcomed their interest in investing, but to sell her new neighbors on the idea of the project itself. This testimony by Ms. Brown was credible. It was reasonably, and as it turned out accurately, anticipated by her that an addiction treatment and recovery facility in Olivenhain would draw local opposition, and she welcomed the opportunity to win over the support of these women. It is significant that Ms. Brown brought with her only one prospectus, and an out of date one at that. Had her intent been to offer securities for sale she undoubtedly would have brought seven copies of the document for distribution to each person at the party.

The other women at the dinner party, on the other hand, were led to believe by Ms. Werner that the dinner was to be merely social and an opportunity to meet and welcome to the neighborhood a new and interesting individual. Their surprise at Ms. Brown's presentation concerning Casa Simpatica is understandable given their expectations.

8. Complainant argued at the hearing that Ms. Brown's email of April 3, 2004, which included a link to the updated prospectus, to the attendees at the dinner party constituted a separate offer to sell an unqualified security. It is noted, however, that complainant did not allege the email of April 3, 2004, as a violation of law or as a separate ground for the Desist and Refrain Order. In fact, the email was not included

[1] Respondents' counsel indicated that Ms. Werner had been subpoenaed to appear, but she did not. Neither party requested a continuance to secure her presence.

in the Statement of Facts at all. As such, it would be a denial of due process to sustain the Order on these facts.[2] But even assuming that the Desist and Refrain Order were construed broadly enough to consider the email as a separate act of the unauthorized offer to sell a security, the charge cannot be sustained on this record. One of the guests at the party specifically requested additional information, and its communication to all of the guests did not constitute a public offering within the meaning of Corporations Code section 25110, Rule 260.120.2 or as considered in light of the Commissioner's guidelines.

ORDER

The Complaint In Support of Desist and Refrain Order of the Commissioner dated May 19, 2004, issued against respondents Casa Simpatica, LLC and Suzy Brown, is dismissed, and the Desist and Refrain Order is rescinded.

DATED: July 5, 2005

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings

[2] By analogy, see Government Code sections 11503, which requires that a "statement of charges" include a recitation of the acts or omissions with which the respondent is charged, to the end that respondent will be able to prepare a defense.