

1 Any written argument that you may submit to the California Corporations
2 Commissioner in this matter must be filed with the Department of Corporations, Office
3 of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California, 95814, on or
4 before June 14, 2004.

5
6 Dated: April 15, 2004
7 Sacramento, California

8 WILLIAM P. WOOD
9 California Corporations Commissioner

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11 By: _____
12 TIMOTHY L. Le BAS
13 Deputy Commissioner and General Counsel
14 Office of Law and Legislation
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**BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA**

In the Matter of the Desist & Refrain Orders
Issued Against:

ROBERT M. CLARK, an individual, and
CLARK ESTATE SERVICES, LLC, a
California Limited Liability Company,

Respondents.

DC file no. alpha

OAH No. L2003060888

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 10, 2003, in Los Angeles, California.

Daniel P. O'Donnell, Corporations Counsel, represented Petitioner.

Jonathan Schwartz, Esq., represented Respondents, who also appeared.

Oral and documentary evidence was received and the matter argued. The record was closed and the matter submitted on November 10, 2003.

The below order AFFIRMS the Desist & Refrain Orders issued against Respondents.

FACTUAL FINDINGS

Parties & Jurisdiction

1A. On December 24, 2002, Supervising Corporations Counsel Virginia Jo Dunlap, on behalf of Demetrios A. Boutris, California Corporations Commissioner ("Petitioner"), issued Desist and Refrain Orders ("D&R Order") against Respondents, pursuant to California Corporations Code section 25532. The D&R Order was thereafter properly served upon them.

1B. The D&R Order alleges, amongst other things, that Respondents sold unqualified securities to investors in California, without being licensed as a broker-dealer in this state, by means including untrue and/or misleading written or oral communications about the securities. The D&R Order includes three separate orders prohibiting Respondents from future such conduct.

2. Respondents timely submitted a written request for a hearing to challenge the D&R Order, which ensued.

3A. Robert M. Clark ("Respondent Clark"), is a 57 year old man, who primarily does business in financial planning. He is married, with one adult daughter. He previously served in the military. He has a business degree and an MBA. He has a commission as a notary public in this state, is licensed as a life agent with the California Department of Insurance, and has a Series 7 security registration from the NASD.

3B. Clark Estate Services, LLC ("Respondent CES"), is a California Limited Liability Company, the business entity Respondent Clark formed to conduct his financial planning business, including the sale of the securities described below.

Facts About TLC Securities

4. At all times relevant hereto, TLC Investment & Trade Co., TLC America, Inc., dba Brea Development Company, TLC Brokerage, Inc., dba TLC Marketing, TLC Development, Inc., and/or TLC Real Properties RLLP-1 (hereinafter collectively referred to as "TLC"), issued investment instruments in the form of promissory notes, real estate investment agreements and/or investment contracts, all of which are securities under the California Corporate Securities Law of 1968 ("CSL"), Corporations Code sections 25000 et. seq. TLC offered and sold these securities through two distinct investment programs – *Tax Liens Certificates* (tax liens on real property located in Texas) and *Opportunity Properties* (various real property located throughout the United States).

5. TLC represented that these securities had a one-year term, carried an interest rate of between 8 and 15 percent, and that the principal would be repaid at the maturity date. At the end of each one-year period, the investor was offered the chance to "rollover" the investment for another one-year period. Each offer by Respondents, described below, and/or TLC, to "rollover" the investment is a separate offer and each completed "rollover" a separate sale of securities in violation of the CSL.

6. These securities were offered and sold to California's investing public by a network of sales agents recruited by TLC. TLC raised more than \$156 million nationwide from more than 1,800 investors.

7. These securities were not qualified with the State of California nor were there any exemptions from qualification available under the CSL.

Facts About How Respondents' Sold TLC Securities

8. Beginning on a date not established in early 1998, Respondents became an agent of TLC, in which capacity they offered and sold securities issued by TLC to California investors.

9. Respondents received sales commissions from TLC ranging from approximately 4½ percent to 6 percent on each dollar invested. Further, each time investors reinvested their initial investments - and some investors “rolled over” their investment more than once - Respondents received another commission.

10. Respondents were not licensed by the State of California, or any other similar licensing entity, to sell the securities at issue.

11A. The securities issued by TLC were offered and sold by means of untrue statements of material fact and omissions of material facts, in violation of the CSL.

11B. Respondents offered and sold the securities by way of numerous sales brochures and materials produced by TLC that included untrue statements of material fact and omissions of material facts. Respondents also made oral representations to investors based on information provided to them by TLC.

11C. It was not established, however, that Respondents failed to perform adequate independent due diligence to confirm the veracity of those TLC documents.

12. Respondents represented to prospective investors that the Tax Lien Certificates were a “safe, liquid, tax-deferred investment”, in part because the investor held title to the property as tenants in common, and that the investor’s principle was secured by real estate, while the interest was guaranteed by a promissory note. While this was the case for many of TLC’s investors nationwide, it was not established that investors to whom Respondents sold these TLC securities were not placed on the deeds to the properties purchased by TLC and therefore not secured. In fact, the only TLC investor who testified, Robert P. Helms, was put on title to his investment property.

13. Respondents also represented to investors, through TLC’s sales brochures and oral representations, that the Tax Lien Certificates would pay the investors a fixed interest rate of between 8% and 15%. In fact, TLC never generated a profit, and between 1998 and 2000, when Respondents were making these representations to investors and potential investors, TLC had lost at least \$15 million. In order to make interest payments at these promised rates to investors, TLC used money from new investors, creating a classic Ponzi scheme. These facts would have been material to any investor’s decision to invest in TLC. Respondents did not disclose these facts to the investors at this time because Respondents did not know those facts, as this was a very well hidden Ponzi scheme perpetrated by TLC’s principals.

14. Respondents also represented to prospective investors that the Opportunity Properties investments were a “Safe, Liquid, Fixed Rate Investment,” in part by representing that the investor would be secured by a deed on the real property as tenants in common with TLC. While few, if any, investors were actually placed on the deeds to the properties purchased by TLC and were therefore not secured, it was not established that this was the case for investors to whom Respondents sold TLC securities. In fact, the only TLC investor who testified, Robert P. Helms, was put on title to his investment property.

15. Respondents also represented to investors that the Opportunity Properties investments would provide “Guaranteed high returns.” In fact, TLC never generated a profit, but rather lost at least \$15 million between 1998 and 2000. In order to make interest payments at these promised rates to investors, TLC used money from new investors, creating a classic Ponzi scheme. These facts would have been material to any investor’s decision to invest in TLC. Respondents did not disclose those facts to the investors because Respondents did not know those facts, for the reason stated above.

16. Respondents did not inform potential investors that they received a commission of up to 6 percent on every investment, as well as on every rollover of the investment, and that they also received “override” commissions on the sales of agents they recruited. Respondents also failed to inform investors that there were people above them who also received commissions on the sale of these investments, including Edward F. “Frank” Cossey (“Cossey”), president of TLC, and that the total commissions paid by TLC exceeded \$20 million or approximately 13 percent of every dollar invested. While it was established that the most of these facts would have been material to any investor’s decision to invest in TLC, it was not established that Respondents failure to inform investors of their commissions would have been material to those investors’ decision to invest with TLC. In fact, the only TLC investor who testified, Robert P. Helms, had assumed Respondents received a commission on the sale of TLC securities to him. In any event, Respondents did not disclose the other commission-related facts to investors because Respondents did not know those facts, for the reason stated above.

17A. On October 5, 2000, the United States Securities and Exchange Commission (“SEC”) obtained a restraining order against TLC and Cossey, among others. The SEC alleged that TLC was operating an illegal Ponzi scheme. The United States District Court, Central District of California, also put TLC into receivership, appointing Robb Evans as receiver. The receivership, at best, has, or will, result in recouping no more than 50% of TLC investors’ investments. Since that time, Cossey, along with Gary Williams, Chief Financial Officer of TLC, have pled guilty in federal criminal actions instituted against them and are serving prison time, based on their activities at TLC.

17B. The SEC alleged that TLC engaged in several kinds of securities fraud relating to their purported real estate business. The SEC’s complaint alleged that TLC falsely represented that it was engaged in the real estate business when it in fact was using investor funds to (a) pay other investors; (b) invest over \$10 million in a fraudulent “prime bank” scheme; (3) buy racehorses; (4) make charitable contributions in the amount of \$1.55 million to the high school football team that Cossey’s son played for, including \$1 million for repairs to the stadium; and (5) be wired overseas.

17C. These facts alleged by the SEC in their complaint came to light after Respondents sold TLC securities to prospective investors. Respondents did not know these facts at the time they sold TLC securities to investors. These facts would have been material to any investor’s decision to invest in TLC.

18. While unlawfully engaged, Respondents sold more than \$3,500,000 in unlawful securities to more than 50 separate victims in California, for which they received more than \$390,000 in sales commissions from TLC.

19. The D&R Order issued to Respondents is necessary and appropriate in the public interest for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of the CSL.

Mitigating Facts

20. Respondents reasonably believed TLC was a legitimate investment enterprise. Respondent Clark attended a seminar given by TLC and was given materials about the business. That information appeared reasonable. Respondent Clark and a colleague also did some independent investigation of the company and its principals, and found nothing alarming. The concept of making money from real estate and tax lien investments seemed logical, and Respondent Clark reviewed supporting magazine articles and book excerpts.

21. Respondent Clark did not believe the TLC items were securities because he was told so and TLC provided him written legal opinions from attorneys who so opined.

22. The TLC business appeared to operate as a legitimate enterprise at first. TLC, and Respondents as its agent, were covered by a sizeable E&O insurance policy underwritten by a reputable insurance carrier. Respondent made frequent visits to TLC's headquarters and saw nothing suspicious about the operation. Respondents started selling TLC products slowly in order to develop a track record. After Respondents first few investors received regular "interest" payments as promised for one year, and thereafter, Respondents began selling TLC products to more investors. Respondents did not become aware of the Ponzi scheme until the end when all investments failed. Respondent Clark himself invested \$12,500 of his own money in TLC and also received regular "interest" payments until the SEC action (nor has he recovered most of his investment in or commissions owed by TLC).

23. After TLC was seized, Respondents kept investors to whom they sold TLC products informed of the SEC and receivership proceedings. Respondents, along with other TLC sales agents, hired and paid for two law firms to litigate the receivership on behalf of their investors. Though many of Respondents' investors were undoubtedly upset about the situation, it was not established that any blamed Respondents. In fact, TLC investor Robert P. Helms testified Respondent Clark was sincere throughout the transaction, and otherwise he stated no objections against Respondents in this matter.

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LEGAL CONCLUSIONS

1. Respondents offered or sold in the State of California, investment instruments in the form of promissory notes, real estate investment agreements and investment contracts issued by another entity, in violation of Corporations Code section 25110, in that the sale of such securities was subject to qualification under the law and such securities were offered for sale without first being so qualified. Factual Findings 1-19.

2. Respondents effected transactions in, or induced or attempted to induce the purchase or sale of securities in this state, and therefore acted as a broker-dealer, subjecting them to licensing as a broker-dealer pursuant to Corporations Code section 25210, but Respondents were not so licensed as a broker-dealer in the State of California and therefore violated that law. Factual Findings 1-19.

3. Respondents offered, sold, bought, or offered to buy, securities in the State of California, including but not limited to investment instruments in the form of promissory notes, real estate investment agreements and/or investment contracts issued by another entity, by means of written and/or oral communication, which included an untrue statement of a material fact and omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The offer or sale of such securities therefore violated Corporations Code section 25401.

Respondents are strictly liable for those statements irrespective of actual knowledge that what they were saying was untrue. *People v. Simon* (1995) 9 Cal.4th 493, 515. Thus, although Respondents performed adequate due diligence, did not know the true facts concerning the TLC operation, and had no reason to believe initially that the TLC investments were not legitimate, they are still liable for making untrue and misleading statements about TLC to their investors. Factual Findings 1-23.

4. Cause exists pursuant to Corporations Code section 25532 for the Corporations Commissioner to have issued orders to Respondents to desist and refrain from such conduct in the future. Even in light of the mitigating facts indicating Respondents were not knowing participants in the TLC scheme, and took efforts thereafter to help victimized investors, there is nothing in Corporations Code section 25532 that prevents issuance of such an order in light of the underlying violations of the law Respondents acknowledge they committed. Factual Findings 1-23.

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ORDER

The Desist and Refrain Orders dated December 24, 2002, against Respondents ROBERT M. CLARK and CLARK ESTATE SERVICES, LLC, by the California Corporations Commissioner, are AFFIRMED.

DATED: January 5, 2004

A handwritten signature in black ink, appearing to read 'Eric Sawyer', is written over a horizontal line.

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings