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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON – CHAIRWOMAN
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

Arizona Corporation Commission
DOCKETED
JUL 27 2022
DOCKETED BY

IN THE MATTER OF: SYNC TITLE AGENCY, LLC, an Arizona Entity, ROSICELLA JOPLIN AND SEAN JOPLIN, Respondent and Spouse, and CHRISTOPHER OLSON, a single man, Respondents.	DOCKET NO. S-21131A-20-0345 DECISION NO. **78642** **OPINION AND ORDER**

DATE OF HEARING:	May 24 and 25, 2021
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Yvette B. Kinsey[1]
APPEARANCES:	Mr. M. Philip Escolar, ESCOLAR LAW OFFICE, on behalf of Respondent Sync Title Agency, LLC;[2] Ms. Rosicella Joplin and Mr. Sean Joplin, *pro se*; Mr. Christopher Olson, *pro se*; and Ms. Mogey Lovelle and Ms. Wendy Coy, Enforcement Attorneys, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

This is an enforcement action brought against Respondents for alleged violations of the Arizona Securities Act, A.R.S. Title 44, Chapter 12 ("Securities Act"). The Arizona Corporation Commission's ("Commission's") Securities Division ("Division") alleges that Respondents (Sync, Ms. Joplin,[3] and

[1] Administrative Law Judge ("ALJ") Yvette B. Kinsey presided at the hearing and over all pre-hearing proceedings. Assistant Chief ALJ Sarah N. Harpring prepared this Recommended Opinion and Order in consultation with ALJ Kinsey after reviewing the pleadings, evidentiary record (including full transcripts), and post-hearing briefs for this matter. ALJ Kinsey has reviewed and approved the findings and conclusions contained herein.

[2] Mr. Escolar was granted permission to withdraw as counsel of record for Sync Title Agency, LLC by Procedural Order issued on January 5, 2022.

[3] Sean Joplin is joined as the spouse of Ms. Joplin for purposes of establishing the liability of the marital community under A.R.S. § 44-2031(C).

Mr. Olson) offered and sold an unregistered security, while not registered as dealers or salesmen, in violation of A.R.S. §§ 44-1841 and 44-1842. Specifically, the Division alleges that Respondents offered and sold a 19.9% interest in Sync Title Agency, LLC ("Sync"), which was to be a new title agency business, to clients who Ms. Joplin and Mr. Olson, as real estate agents, had previously worked with concerning potential real estate purchases. The Division also alleges that Respondents engaged in fraud, in violation of A.R.S. § 44-1991, by misrepresenting when Sync would be open, that the investment in Sync was "fail safe," that the investors' funds would be refunded if Sync did not open, and that the investors' funds would be used for opening Sync. The Division also alleges that Ms. Joplin and Mr. Olson are controlling persons for Sync and thus, pursuant to A.R.S. § 44-1999, jointly and severally liable to the same extent as Sync for its violations of A.R.S. § 44-1991. Respondents acknowledge that Ms. Joplin and Mr. Olson are not registered, and that the 19.9% interest in Sync was not registered as a security, but argue that the transaction was exempt as a non-public offering and that no fraud has been committed.

DISCUSSION

I. Procedural History

On November 18, 2020, in the above-captioned docket, the Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action ("Notice") against Respondents.[4] In the Notice, the Division alleged that Sync, Ms. Joplin, and Mr. Olson have engaged in acts, practices, and transactions that constitute violations of the Securities Act; that Ms. Joplin and Mr. Olson are persons controlling Sync within the meaning of A.R.S. § 44-1999(B) and thus are jointly and severally liable under that statute to the same extent as Sync for its violations of the antifraud provisions of the Securities Act; and that Mr. Joplin is joined in the action under A.R.S. § 44-2031(C) because he was the spouse of Ms. Joplin at all relevant times.

On December 10, 2020, the Division filed Affidavits of Service for Respondents.

On December 17, 2020, Respondents filed a Joint Request for Hearing.

[4] "Respondents" is used to denote Sync, Ms. Joplin, and Mr. Olson. Mr. Joplin is not alleged to have been involved in the activities that are asserted to be violations of the Securities Act and is joined as the spouse of Ms. Joplin for purposes of establishing the liability of the marital community under A.R.S. § 44-2031(C).

On January 4, 2021, Sync, Mr. Olson, and Ms. Joplin filed their Answers to the Notice. In its Answer, Sync moved for an order of dismissal of the action, with prejudice, on behalf of Respondents.[5]

On January 6, 2021, a Procedural Order was issued setting a telephonic pre-hearing conference for January 27, 2021.

On January 27, 2021, the telephonic pre-hearing conference was held as scheduled. Sync and the Division appeared through counsel. Ms. Joplin, Mr. Olson, and Mr. Joplin appeared *pro se*. Discussion was held regarding hearing dates, and it was determined that the hearing would commence on May 24, 2021. The methods for participation in the hearing were also discussed, in light of the Commission's policy related to the COVID-19 pandemic.

On January 28, 2021, by Procedural Order, a hearing was scheduled to commence on May 24, 2021, and other procedural deadlines were established.

On May 24, 2021, a hearing was held as scheduled before a duly authorized Administrative Law Judge of the Commission. The Division and Sync appeared through counsel, and Ms. Joplin, Mr. Olson, and Mr. Joplin appeared *pro se*. Counsel for Sync stated that Sync, Ms. Joplin, and Mr. Olson had a joint defense agreement, although Ms. Joplin and Mr. Olson represented themselves.[6] The Division and Respondents presented testimony and documentary evidence. At the conclusion of the hearing, a briefing schedule was established.

On June 14, 2021, by Procedural Order, the briefing schedule was memorialized.

On July 12, 2021, the Division filed its Initial Brief.

On July 13, 2021, the Division filed a Notice of Errata and Request for Docket Control to Move its Initial Brief to the Correct Docket File.[7]

On August 16, 2021, Sync filed an Answering Brief. In the Answering Brief, Sync stated that because the arguments and interests of the Respondents are unified, the brief could effectively serve as an Answering Brief for all of the Respondents, although either of the Joplins or Mr. Olson could file

[5] There was not a formal Motion to Dismiss conforming to A.A.C. R14-3-106(K) and the Arizona Rules of Civil Procedure, as per A.A.C. R14-4-301.

[6] Tr. at 8.

[7] The Division asserted that it had filed the brief in an incorrect docket.

independent briefs if they chose to do so.[8]

Also on August 16, 2021, Sync filed a Notice of Errata Re: Service of its Answering Brief, providing corrections of the service certificate for the Answering Brief.

On August 23, 2021, the Division filed a Motion for Extension of Time to File Post-Hearing Reply Brief, requesting a two-week extension of time to file the Division's Reply Brief to accommodate medical issues.

On August 26, 2021, by Procedural Order, the Division's Motion for Extension of Time to File Post-Hearing Reply Brief was granted, and a new deadline of September 10, 2021, was established.

On September 10, 2021, the Division filed its Reply Closing Brief.

On December 3, 2021, counsel for Sync filed a Motion to Withdraw as Counsel of Record for Sync, due to counsel's relocation to Nevada and plan to become inactive with the Arizona State Bar.

On January 5, 2022, by Procedural Order, the Motion to Withdraw as Counsel of Record for Sync was granted.

II. The Evidence

At the hearing, the Division offered the testimony of investors Megan and Marcus Williams, a married couple; Steven Fromholtz, Division Manager for the Arizona Department of Insurance and Financial Institutions ("DIFI"[9]); William Woerner, Senior Investigator for the Division; and Cody Turley, Forensic Accountant for the Division. (*See* Tr. at 23, 62, 79-80, 88-90, 105-06.) Respondents offered the testimony of Ms. Joplin and Mr. Olson. (*See* Tr. at 125-126; 255-256.) Additionally, the Division and Respondents each had a number of exhibits admitted. (*See* Ex. S-1 through Ex. S-26;[10] Ex. R-1 through Ex. R-20.[11])

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[8] Sync counsel asserted throughout this matter that he only represented Sync. Because none of the other Respondents filed briefs, however, the Commission treats the Sync brief as though it is the brief of all Respondents.

[9] DIFI is the current name for this agency, which is a combination of the former Arizona Department of Financial Institutions ("AZDFI") and Arizona Department of Insurance ("AZDOI"). Before August 25, 2020, title insurers and title insurance agents were regulated by AZDOI, and escrow agents were regulated by AZDFI. Effective August 25, 2020, pursuant to Laws 2020, Chapter 37, AZDOI and AZDFI were consolidated into DIFI. (*See* A.R.S. § 20-101.)

Title insurers and title insurance agents are regulated under A.R.S. Title 20, Chapter 6, Article 9, §§ 20-1561 through 20-1592. A.R.S. § 20-1580 requires title insurance agents to be licensed. Escrow agents are regulated under A.R.S. Title 6, Chapter 7, §§ 6-801 through 6-846.04. A.R.S. § 6-813 requires escrow agents to be licensed.

[10] Citations to Bates Code page numbers in Division exhibits omit "ACC" and the initial zeros.

[11] Respondents' collective exhibits are numbered by page consecutively beginning with 2 and ending with 329. References to page numbers within Respondents' exhibits use these numbers, which do not coincide with the number of pages within any separate exhibit.

A. The Investors

Mr. and Ms. Williams were residents of Maricopa County, Arizona, during the times material to this matter. (Tr. at 23, 62.) Ms. Williams is a homemaker who completed three semesters of college at Arizona State University. (Tr. at 54.) Mr. Williams works as an auto technician. (Tr. at 62.) As of the hearing, the Williamses were engaged in fixing and flipping homes, averaging one or two homes per year, and had bought and resold a total of seven properties. (Tr. at 26, 28, 54-55.) The Williamses are not accredited investors. (Tr. at 27-28, 359-360.)

B. The Respondents

1. Ms. Joplin

Ms. Joplin was a resident of Maricopa County, Arizona, and married to Mr. Joplin during all times material to this matter. (Tr. at 127.) Mr. Joplin was not involved with Sync's activities or paperwork. (Tr. at 126-127.)

Ms. Joplin has been a licensed real estate agent since 2013 and a licensed real estate broker since 2016. (Tr. at 127-128.) Since late 2017, Ms. Joplin has owned and operated her own real estate brokerage, Joplin Realty, LLC. (Ex. S-15; *see* Tr. at 130.) Ms. Joplin has completed some college and classes for her real estate license and mortgage license and is a notary public but does not have a college degree, has not taken any courses in investment or accounting, and does not hold any other professional certifications or licenses. (Tr. at 98, 127-128; Ex. S-17 at 13.) Before becoming a real estate agent, Ms. Joplin worked in Arizona as the owner of her own pet-sitting service, as a teacher's assistant in Scottsdale for a few years, and briefly at Vanguard Investment Group. (Tr. at 128, 130.) Before moving to Arizona, Ms. Joplin worked at a bank in California for 10 years, ultimately as assistant vice president for international trade finance letters of credit; as an executive assistant in the accounting department of Ernst & Young for a few months; and as the owner of her own flower shop and mobile notary service. (Tr. at 129-130.) From 2013 to 2016, Ms. Joplin worked for the brokerage Cambridge Properties, heading her own team known as "JoplinSchaffler." (Tr. at 130.) After acquiring her brokerage license in 2016, Ms. Joplin formed and then operated JoplinSchlaffler Real Estate LLC with a partner from 2016 to late 2017. (Tr. at 130.)

In approximately January to February 2017, a "Press Release for JoplinSchaffler Real Estate"

was linked to Ms. Joplin's LinkedIn account. (Ex. S-26.) The press release, dated January 14, 2017, states that Ms. Joplin graduated from the University of Southern California ("USC") with a degree in finance and worked in the accounting and financial industries for 10 years before becoming a real estate agent. (Ex. S-26.) According to Ms. Joplin, Dan Schaffler, Cambridge Properties' managing broker at the time, created the press release and linked it to Ms. Joplin's LinkedIn account, which he managed. (Tr. at 239-240.) The press release was also linked to Ms. Joplin's Twitter account and to JoplinSchaffler Realty's Pinterest account. (Ex. S-26; Tr. at 240.) The Pinterest account also describes Ms. Joplin as a Certified Public Accountant ("CPA"). (Ex. S-26.) Ms. Joplin testified that she was not aware that she had a Pinterest account. (Tr. at 240.) According to Ms. Joplin, the biographical information for the Twitter and Pinterest accounts "all feed[s] through the same website," which also feeds to the website for Joplin Realty. (Tr. at 240.) Ms. Joplin testified that she never read the JoplinSchaffler social media accounts or press releases because she was too busy as the main agent selling homes. (Tr. at 251.)

As of March 2021, Ms. Joplin's biography on Joplin Realty's website stated that Ms. Joplin was a CPA and had graduated from USC with a degree in finance. (Ex. S-18; Ex. S-19; Tr. at 98-99, 132.) According to Ms. Joplin, the biographical information was created by Cambridge Properties when she worked there, based on a questionnaire that she filled out, and was uploaded into the multiple listing service ("MLS") without Ms. Joplin's looking at it or knowing what it said. (Tr. at 131-134.) Ms. Joplin stated that because it was linked to her identification in the MLS, the information automatically followed her to JoplinSchaffler and JoplinRealty.com. (Tr. at 131-134.) Ms. Joplin asserted that she had never paid attention to the biographical information and first became aware of its inaccuracies when she received the Division's exhibits in this matter. (Tr. at 133-134.) Ms. Joplin asserted that after she saw the information, she contacted the Association of Realtors and GoDaddy.com and had both take it down. (Tr. at 134.) Ms. Joplin testified that she has never claimed to be a CPA in any other written document and has not represented to any person, including the Williamses, that she is a CPA. (Tr. at 134.) Ms. Joplin testified that when the Williamses asked her what she did before becoming a real estate agent, she told them that she worked for Bank of America Trade Finance and Ernst & Young. (Tr. at 134-135.)

Ms. Williams testified that Ms. Joplin told Ms. Williams in person, in November or December 2018, that Ms. Joplin was a CPA. (Tr. at 53.) Mr. Williams also testified that Ms. Joplin told the Williamses that she was a CPA. (Tr. at 63.)

The Arizona State Board of Accountancy provided a letter to the Division on March 15, 2021, stating that Ms. Joplin was not certified as a CPA in Arizona from January 1, 2018, to March 15, 2021. (Tr. at 99; Ex. S-19.)

The Director of the Division certified on March 9, 2021, that during the period of January 1, 2018, to March 8, 2021, Ms. Joplin was not registered with the Commission as a securities salesman or dealer under Article 9 of the Securities Act and did not make a notice filing and was not licensed with the Commission as an investment adviser or investment adviser representative under Article 4 of the Arizona Investment Management Act. (Ex. S-1b.) Additionally, Mr. Woerner testified that Ms. Joplin was not a licensed dealer or salesman. (Tr. at 91.)

2. Mr. Olson

Mr. Olson was a resident of Maricopa County, Arizona, during all times material to this matter. (Tr. at 256.) Mr. Olson has been a licensed real estate salesperson since 2012 and obtained both his real estate broker license and his mortgage broker's license approximately two years before the hearing in this matter. (Tr. at 256-257.) In 2015, Mr. Olson opened the real estate brokerage Top Realty LLC ("Top Realty") with his father, Rob Olson, who is also a real estate broker, and the two of them manage Top Realty. (Tr. at 257-258; Ex. S-13.) Before opening Top Realty, Mr. Olson worked for Keller Williams Realty. (Tr. at 257.) Before working in real estate, Mr. Olson worked at a weld shop and then at a rock climbing gym. (Tr. at 257.) Mr. Olson has not completed any college. (Tr. at 256.) Mr. Olson was not married during the times relevant to this matter. (*See* Ex. S-21 at 1.)

The Director of the Division certified on March 9, 2021, that during the period of January 1, 2018, to March 8, 2021, Mr. Olson was not registered with the Commission as a securities salesman or dealer under Article 9 of the Securities Act and did not make a notice filing and was not licensed with the Commission as an investment adviser or investment adviser representative under Article 4 of the Arizona Investment Management Act. (Ex. S-1c.) Additionally, Mr. Woerner testified that Mr. Olson was not a licensed dealer or salesman. (Tr. at 91.)

3. Sync

Ms. Joplin and Mr. Olson met in late 2017 or early 2018 at a networking event, at which they were both representing their respective brokerages. (Tr. at 208.) At the event, Ms. Joplin, Mr. Olson, and Nigel Drummond talked about opening a mortgage company. (Tr. at 208.) The three of them formed Lime Mortgage, LLC ("Lime"), a member-managed LLC, in April 2018, and Lime completed its first mortgage loan at the end of 2019. (Tr. at 208-209; Ex. S-12a.) Mr. Drummond left Lime in approximately September 2019, and Ms. Joplin and Mr. Olson have been the managing members of Lime ever since. (Tr. at 93, 135-136, 259; Ex. S-12b.)

Ms. Joplin and Mr. Olson started talking about opening a title company shortly after they opened Lime because they had identified delay with the title company process as a potential obstacle for their real estate clients' purchases. (Tr. at 209-210.) Mr. Olson drafted a business plan, and the plan was for the title company to be financed with funds from Joplin Realty and Top Realty. (Tr. at 210.)

Ms. Joplin and Mr. Olson formed Sync, as a member-managed LLC, on May 8, 2018, although Mr. Olson's name was misidentified in the original Articles of Organization as "Chris Allen." (Ex. S-2a; Tr. at 321-322.) Mr. Olson's name was corrected in Articles of Amendment filed on August 16, 2018. (Ex. S-2b.)

Ms. Joplin obtained the domain registration for synctitle.com through GoDaddy on May 3, 2018, and a WordPress website and email for synctitleagency.com through GoDaddy at approximately the same time. (Tr. at 171-172; Ex. R-17 at 307-310.) Ms. Joplin also obtained a taxpayer identification number for Sync and started filling out the "title application"[12] for Sync in April or May of 2018. (Tr. at 253.)

In October 2018, Mr. Olson emailed Dona Hink/Donna Hinkle[13] ("Ms. Hinkle"), in anticipation for a meeting between them the next day, telling Ms. Hinkle about Sync, which Mr. Olson said was to be opened in November 2018. (Ex. R-7.) In the email to Ms. Hinkle, Mr. Olson stated that the plan

[12] Counsel for Sync used the term "title application" in his question, although the context suggests that he may have meant the escrow agent application. (Tr. at 253.)

[13] Although the email address used to contact her used the name "donahink," in his testimony, Mr. Olson referred to her as Ms. Hinkle. (*See* Ex. R-7; Tr. at 319-320.)

was for Sync to charge "flat rates for the escrow portions and underwriting through First American and Old Republic" and eventually to hire an escrow assistant to help its escrow officers and to hire out "some business development roles." (Ex. R-7.) Mr. Olson testified that he interviewed Ms. Hinkle for the escrow officer position with Sync after having met her at a networking event when she was working at a different title company. (Tr. at 319-320.) Mr. Olson testified that he planned to hire Ms. Hinkle as soon as Sync opened and that she was enthusiastic about working for Sync. (Tr. at 320.)

The Director of the Division certified on March 9, 2021, that during the period of January 1, 2018, to March 8, 2021, Sync did not file with the Commission a notice under A.R.S. § 44-1850 of the Securities Act or Article 12 of the Arizona Investment Management Act; did not register securities with the Commission by description under Article 6 of the Securities Act or by qualification under Article 7 of the Securities Act; was not registered as a dealer under Article 9 of the Securities Act; and did not make a notice filing and was not licensed with the Commission as an investment adviser under Article 4 of the Arizona Investment Management Act. (Ex. S-1a.) Mr. Woerner also testified that neither Sync nor any member interests in Sync were registered with the Division. (Tr. at 91.)

C. Interactions and Events Leading Up to the Williamses' Investment in Sync

The Williamses first came into contact with Ms. Joplin in early September 2018, when Ms. Williams contacted Ms. Joplin to request that Ms. Joplin serve as buyers' agent for the Williamses on a new-build home by KB Homes. (Tr. at 24-25, 63, 139-140; Ex. R-6 at 78-79.) The Williamses first came into contact with Mr. Olson around the same time, through Ms. Joplin, as Mr. Olson generally accompanied Ms. Joplin when she spent time with the Williamses. (Tr. at 24-25, 63, 265.) The Williamses were aware that Ms. Joplin was a real estate agent/broker, with her own company, Joplin Realty, and had a partial ownership in a mortgage company, Lime, and they learned that Mr. Olson was also a real estate agent/broker and partial owner of Lime. (Tr. at 24-25, 63, 139-140.) The Williamses also became aware that Mr. Olson was a managing member of Top Realty. (Tr. at 25, 67.)

In addition to serving as buyers' agent for the KB Homes new-build home, Ms. Joplin wrote offers on several homes in Tucson that the Williamses were interested in fixing up and reselling. (Tr. at 25-26, 28, 63, 139, 140, 142-143; Ex. R-16.) In late October 2018, one of the purchase offers was accepted. (Ex. R-6 at 150.) The Williamses became friends with Ms. Joplin and Mr. Olson. (Tr. at

64, 141, 146-147, 266; *see* Ex. S-10 at 1513; Ex. R-2 at 22-23.) The four of them had meals together after looking at possible investment properties and also spent time together socially, with Ms. Joplin and Mr. Olson spending time at the Williamses' home and the Williamses attending a party at Mr. Olson's home. (Tr. at 140-141, 266-267.)

Ms. Williams located some of the homes on which she asked Ms. Joplin to make offers and sent Ms. Joplin the information to include in the offers but also asked Ms. Joplin to identify suitable properties for her, which Ms. Joplin did. (Tr. at 140, 145-146; Ex. R-6.) Additionally, in early December 2018, Ms. Williams and Mr. Olson communicated via text about a property for which Mr. Olson represented the seller. (Ex. S-10 at 1572-1573.) Ms. Williams used a formula to determine whether to make an offer on each house, based on an investment seminar she had completed and how much money she wanted to make from the investment. (Tr. at 146, 190.) Ms. Joplin testified that she considered Ms. Williams to be "really savvy" about how much she would offer for a property because of the formula she used and her use of "really odd numbers not like any regular people that will say like help me figure up an offer or offer full price or offer 10,000." (Tr. at 190.) When making offers, Ms. Williams told Ms. Joplin how much cash could be invested and sent proof of funds that included a couple of bank accounts, which Ms. Joplin recalled as containing balances of approximately $150,000 and approximately $200,000. (Tr. at 191.) Banking documents provided to Ms. Joplin in approximately October 2018 show that Ms. Williams's bank account contained approximately $104,000, while another bank account in the name of Custom Management held approximately $113,500. (Ex. R-16 at 304-305.) Except for the KB Homes new-build home, Ms. Williams had Ms. Joplin write cash offers for investment properties; however, Ms. Williams mentioned the possibility of FHA financing to Mr. Olson concerning the home for which Mr. Olson was seller's agent. (Tr. at 191; Ex. S-10 at 1575.)

Ms. Williams testified that while they were looking at a property together in November 2018, Ms. Joplin and Mr. Olson asked if the Williamses would be interested in investing in something other than real estate. (Tr. at 26-27.) According to Ms. Williams, Mr. Olson discussed some options such as hard money lending and buying notes, and the Williamses stated that they were not interested in that. (Tr. at 28.) According to Ms. Joplin, the conversations about investments occurred because Ms.

Williams had mentioned to Ms. Joplin that Lime getting business from Joplin Realty and Top Realty was a good arrangement and asked Ms. Joplin if the Williamses could invest in Lime. (Tr. at 141, 211-212.) Ms. Joplin testified that she told Ms. Williams Lime was not accepting investors and that previously three people had been involved with Lime. (Tr. at 141, 212.) Ms. Joplin considered herself, Mr. Olson, and Mr. Drummond to be partial owners rather than "investors" in Lime but believes Ms. Williams considered them to be investors. (Tr. at 212.)

On December 10, 2018, Mr. Olson sent Ms. Williams a message about a possible investment. (Tr. at 26-27.) In the December 10, 2018, text message, Mr. Olson wrote:

> Rosi [Ms. Joplin] and me were curious if you guys had considered doing any other kinds of investing besides from property? I know you mentioned you guys were looking into hard money lending prior but were not able to because of not being accredited. Rosi and have [sic] been looking at the idea of taking on investments with our title and escrow company and if that's something up your alley we would be happy to outline something and talk. If not just an idea we wanted to throw your way.[14]

Ms. Williams responded that they "would be open to other investments . . . [and had] focused on the flipping because [they] could get good returns and build capital quickly." (Ex. S-10 at 1576.) Mr. Olson replied and asked Ms. Williams to let him and Ms. Joplin know when they had time to "sit down and outline something." (Ex. S-10 at 1576.) Ms. Williams responded that she would. (Ex. S-10 at 1576.)

On December 19, 2018, Mr. Olson sent Ms. Williams the following message:

> Hey, wanted to follow up with you on my last message about our title company venture. Wanted to see if you and Marcus had put any thought to our offer? [sic] Rosi and me [sic] have been considering taking on a partner or doing something to assist with growing faster. Let us know if you guys are interested[;] you'd be surprised at the numbers from the business.[15]

Ms. Williams responded by asking if they could aim for a date after Christmas, to which Mr. Olson responded affirmatively. (Ex. S-10 at 1578.) On December 21, 2018, Ms. Williams messaged Mr. Olson to ask if he and Ms. Joplin were available "to discuss investments" on December 26, 2018, and Mr. Olson responded affirmatively for himself and said that he would ask Ms. Joplin. (Ex. S-10 at 1578-1579.)

[14] Ex. S-10 at 1574; Tr. at 27.
[15] Ex. S-10 at 1577.

On December 26, 2018, the Williamses met with Ms. Joplin and Mr. Olson at a coffee shop in Scottsdale to discuss the Sync investment. (Tr. at 28-30, 156-157, 273-274; Ex. R-2 at 22.) At that meeting, Mr. Olson and Ms. Joplin stated that they were starting a title company and looking for an investor to make an investment in the company and hold a little less than a 20% interest in the company. (Tr. at 29; *see* Tr. at 273-274; Ex. R-2 at 22.) The Williamses both testified that Mr. Olson and Ms. Joplin told them that the investment had already been discussed with another couple but had not worked out.[16] (Tr. at 29, 70-71.) Ms. Williams testified that Mr. Olson and Ms. Joplin said they had also discussed the investment with a single man. (Tr. at 29.) Ms. Joplin testified that Mr. Olson had mentioned that someone else wanted to be part of the title company, although Ms. Joplin did not know the details. (Tr. at 148.)

At the coffee shop meeting, no specific investment dollar amount was discussed, but Mr. Olson and Ms. Joplin explained how the Williamses would get paid, the sources from which Mr. Olson and Ms. Joplin expected business to come, and how much business they expected the title company to do. (Tr. at 29, 274; *see* Ex. R-2 at 26.) Mr. Williams testified that Mr. Olson and Ms. Joplin told the Williamses that they would receive a certain percentage of the title company's profits and that the profits would be generated from title service fees because Mr. Olson and Ms. Joplin would both funnel their customers to the company for title services, and the title company would also have outside customers.[17] (Tr. at 64.) Ms. Williams testified that Mr. Olson and Ms. Joplin specifically told the Williamses that each real estate closing generates a percentage of profit based on the sale price and that after all expenses were paid, including overhead and for the escrow and title officer, the Williamses would receive 19.9% of that profit, which would be paid monthly. (Tr. at 30.) Ms. Williams further testified that Mr. Olson said he expected the title company to do 10 deals a month and that with an average deal being at least $250,000, the Williamses could make approximately $6,000 or $7,000 per month, depending on how many closings occurred. (Tr. at 31.) Mr. Williams testified that Mr. Olson

[16] Mr. Olson testified that he had discussed Sync membership with a couple that he had known for "quite a long time," although he did not tell them he was looking for partners, and that the couple "opened up the discussion about potentially being partners and we – they kind of outlined like a proposal to us," which ultimately did not lead to a deal. (Tr. at 270.)

[17] Mr. Olson uses the term "linear integration model" to describe his and Ms. Joplin's plan to have businesses that can control all aspects of a real estate transaction from start to finish—covering real estate services (JoplinRealty and Top Realty), mortgage services (Lime), and title and escrow services (Sync). (Tr. at 261-262, 343.)

and Ms. Joplin gave an example through which the Williamses would receive approximately $5,000 to $6,000 per month as a return on their investment. (Tr. at 64-65, 75.) According to Ms. Williams, Mr. Olson also explained that as holders of less than a 20% interest, the Williamses would not need to be included on all of the paperwork that was provided to the state in the initial application for the title company, which would make the application process faster and smoother because the Williamses would not need to be involved in licensing requirements and background checks. (Tr. at 30-31.) According to the Williamses, Mr. Olson told them that the title company should be up and running by the end of February 2019 or within a month after the closing. (Tr. at 32, 65-66.) The Williamses also testified that they were told their investment would be refunded if the title company did not open by a certain date, with Ms. Williams stating that they were told this during the meeting at the coffee shop, and Mr. Williams stating that Mr. Olson told him this during a couple of phone conversations. (Tr. at 39, 57-58, 70.)

On January 3, 2019, Mr. Williams texted Mr. Olson to ask whether he and Ms. Joplin had "come up with a number yet" for the amount the Williamses would need to invest in the title company. (Ex. S-10 at 1538; Ex. R-2 at 26; Tr. at 274.) Mr. Olson responded that he and Ms. Joplin had an outline for the Williamses and offered to email it to the Williamses that evening. (Ex. S-10 at 1538; Ex. R-2 at 26; Tr. at 275.) On January 4, 2019, Mr. Williams texted Mr. Olson to ask if the outline had been emailed. (Ex S-10 at 1539; Ex. R-2 at 26; Tr. at 275.) On January 5, 2019, by text, Ms. Williams thanked Ms. Joplin and Mr. Olson for sending over the proposal for the title company, stated that the Williamses had some questions, and asked if they could all meet the following day. (Tr. at 32; Ex. S-7 at 53.)

On January 6, 2019 (a Sunday), Mr. Olson, Ms. Joplin, and the Williamses (including their children) met at Lo-Lo's Chicken and Waffles to discuss the proposal and the Williamses' questions. (Tr. at 32-33, 156-157, 275-276; Ex. S-7 at 55; Ex. R-2 at 27.) Ms. Williams testified that Sync was not discussed in depth at that meeting but that there was discussion about when the Williamses would receive a purchase agreement or operating agreement. (Tr. at 56.) Mr. Olson testified that Mr. Williams asked a lot of questions at the meeting and that the meeting lasted "for quite a while." (Tr. at 276-277.) Mr. Olson testified that at the meeting, he and Mr. Williams discussed a $100,000

investment and what the Williamses would receive in return for that. (Tr. at 277.) Mr. Olson stated that he also answered all of Mr. Williams's questions, in significant detail, and gave Mr. Williams an example of the "fee stream" that would allow Sync to make money not only on the escrow agent side but also on the title insurance side from transactions generated by Joplin Realty, Top Realty, Lime, and external referrals from other mortgage companies and real estate brokers. (Tr. at 277-278.) According to Mr. Olson, he and Mr. Williams did not discuss how the funds invested by the Williamses would be used but did discuss Mr. Olson's and Ms. Joplin's backgrounds, how money would go from Sync to the Williamses, and the potential risks associated with the investment. (Tr. at 278-279.) Mr. Olson testified that he explained to Mr. Williams that as a real estate industry business, Sync would be subject to the ups and downs of the real estate market. (Tr. at 279.) Mr. Olson stated that he also shared with the Williamses that Sync already had been formed as an LLC, what Sync's logo looked like, and other basic information about the business itself and told the Williamses that they were free to ask him any questions and to get any information from him concerning the Sync investment. (Tr. at 279-280.)

Ms. Joplin testified that during both meetings, she was primarily occupied with the Williamses' baby, while Mr. Olson and Mr. Williams were talking about the title company, Ms. Joplin and Mr. Olson's vision for the title company, and how business for the title company would be drawn from the real estate brokerages and Lime, "creating a formula to like synchronize everything." (Tr. at 157, 213-214.) Ms. Joplin testified that the name, Sync, was created to show the synchronization of all the parts of a real estate transaction into one. (Tr. at 157.) Ms. Joplin acknowledged that she was involved in a discussion of how many sales her brokerage has done and whether her clients would accept using a title company that she owned. (Tr. at 214.) According to Ms. Joplin, Mr. Olson did most of the talking with Mr. Williams and provided the Williamses the documentation because Mr. Olson "handles all the business plan documents" and is "the legal one." (Tr. at 157, 213-215.)

On January 11, 2019, Mr. Williams texted Mr. Olson to thank him for meeting and answering questions on Sunday. (Ex. S-10 at 1539.) Mr. Olson apologized for taking "all week to get stuff put together" and stated that he and Ms. Olson had "just got[ten] an outline of paperwork back late [that] afternoon" and that he just had not been back to the office to send it. (Ex. S-10 at 1540.) Mr. Olson also texted: "Both Rosi and myself are super excited about partnering with you guys. **We definitely**

have a slam dunk going on." (Ex. S-10 at 1540 (emphasis added).)

On January 14, 2019, Mr. Olson texted Mr. Williams to ask whether the Williamses had received "the set of docs from Rosi the other day" and saying that they should let him know if they had any questions. (Ex. S-10 at 1541.) Mr. Williams responded that he had not, and Mr. Olson said that he believed the email had been sent to Ms. Williams. (Ex. S-10 at 1541.) Also on January 14, 2019, Ms. Williams texted Mr. Olson to let him know that she had received the proposal, that she had a few questions but needed to reread it, and that most of the proposal made sense but there were a couple of things she did not understand. (Ex. S-10 at 1581.) Mr. Olson offered to answer her questions if she emailed them or by phone and further stated that there was a "[b]unch of lawyer talk in that thing" and that "[a]ll that stuff is always so much more complicated than it probably ever needs to be."[18] (Ex. S-10 at 1582.)

On January 16, 2019, Ms. Joplin messaged[19] the Williamses "to follow up . . . on the email she send [sic] [them] with the first draft of Sync Title" and asking whether they had any questions. (Ex. S-7 at 55; Ex. S-10 at 1592.) Mr. Williams responded that the Williamses were "having a lawyer look at it on Friday." (Ex. S-7 at 55; Ex. S-10 at 1592.)

On January 18, 2019 (Friday), Mr. Olson messaged the Williamses asking them to let him know whether the Williamses or their "attorney reviewing the sample docs outline had any questions" and offering to try and answer any such questions. (Ex. S-10 at 1593, 1600-1601.) Mr. Williams responded that they were waiting to hear back from their attorney. (Ex. S-10 at 1593, 1601.)

Ms. Williams testified that the Williamses' lawyer reviewed the initial draft agreement and advised the Williamses that the agreement had numerous issues and that he would not be comfortable with their signing it unless it was almost entirely rewritten. (Tr. at 35.) On January 24, 2019, Mr. Williams messaged Mr. Olson asking whether Mr. Olson had received the email. (Ex. S-10 at 1541.) Mr. Olson responded that he had and that he and Ms. Joplin "had our attorney redo the docs that [he would] have over to [the Williamses] first thing in the morning." (Ex. S-10 at 1541.) The Williamses

[18] Mr. Olson created the initial offer outline document and the initial draft of the purchase agreement for the Williamses' investment in Sync. (Tr. at 216, 280-282, 347.)

[19] A number of the messages between the Williamses and the Respondents appear in the Division's exhibits in duplicate form as both Facebook Messenger messages and texts. (*See, e.g.,* Ex. S-7 at 55; Ex. S-10 at 1592.) It is our belief that these are duplicate forms of single messages.

ultimately did not request revisions to the initial draft agreement because the subsequent contract provided by Mr. Olson and Ms. Joplin was entirely different from the draft agreement. (Tr. at 35.)

On January 26, 2019, Mr. Olson emailed the Williamses two attachments, the "Sync Title 19.9 Limited Liability Company Interest Purchase Agreement 012519v2.2docx" ("Purchase Agreement"[20]) and the "Sync Title Agency Operating Agmt 012419v1.31doc" ("Operating Agreement"[21]) (Ex. S-5.) In the email accompanying the attachments, Mr. Olson stated:

> Hey Marcus, attached are the revised sale agreement for the escrow/title company along with the initial operating agreement. As the company progresses we can all come together and revise if needed.
>
> If you or megan have any questions or concerns we can schedule a conference call with our attorney who drafted the documents. We can also give you his contact info for a private 1 on 1 call.
>
> As for the closing date on the sale once everything is all set we would like to do something next week so we can get everything progressing.[22]

On January 29, 2019, Mr. Olson messaged the Williamses as follows:

> Hey, Rosi and me [sic] wanted to touchbase [sic] with you guys. Was there [sic] any questions on the updated docs we sent? Can we schedule a conference call with the attorney that drafted it with any questions or concerns? We would like to get something put together prior to the end of the month so we can progress forward with everything to open.[23]

Ms. Williams responded that she had been sick and that "a conference call sound[ed] like a good idea" and asked when the attorney was available. (Ex. S-10 at 1603; Ex. S-7 at 56.) Mr. Olson asked whether the next morning (January 30, 2019) would work for the call. (Ex. S-10 at 1603; Ex. S-7 at 56.) Mr. Williams responded to ask if noon would work, and Mr. Olson replied that noon should work and that he would try to put together the call and would let the Williamses know first thing in the morning. (Ex. S-10 at 1542-1543.)

On January 30, 2019, Mr. Olson messaged the Williamses asking if noon would still work for the call and stating that it was scheduled with "Phil the attorney."[24] (Ex. S-10 at 1606.) Mr. Williams

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[20] The Purchase Agreement was admitted as pages 1376-1381of Exhibit S-3 and as Exhibit R-15.
[21] The Operating Agreement was admitted as pages 1382-1392 of Exhibit S-3 and as Exhibit R-14.
[22] Ex. S-5.
[23] Ex. S-10 at 1602-1603; Ex. S-7 at 56.)
[24] This is M. Philip Escolar, the counsel representing Sync during the hearing and briefing stage of this matter. We would be remiss if we did not note that counsel for Respondents herein could potentially have been called as a fact witness in this case. Although Mr. Escolar was involved in some of the events that occurred, probably most notably in the phone call answering the Williamses' questions the day before the Purchase Agreement was signed, we do not consider Mr. Escolar's advocacy in this matter to be equivalent to sworn testimony as to what occurred, and we do not consider Mr. Escolar's statements as counsel for Respondents to be evidence as to the facts of what occurred.

responded affirmatively. (Ex. S-10 at 1544, 1606.) At 12:01 p.m. on January 30, 2019, Mr. Williams messaged Mr. Olson to ask if he was ready, and Mr. Olson replied that Ms. Joplin "should be on with Phil" and that he would be "joining in 2 mins." (Ex. S-10 at 1565, 1609.) Ms. Williams testified that in the January 30, 2019, conference call involving the Williamses, Mr. Olson, Ms. Joplin, and Mr. Escolar, the whole contract was discussed, and the Williamses' questions were answered. (Tr. at 36; Ex. S-7 at 58-59.) At 1:27 p.m. on January 30, 2019, Ms. Williams messaged Mr. Olson and Ms. Joplin: "Thank you for answering our questions as well as having Phil on the call to clarify things for us." (Ex. S-10 at 1565, 1610.) Mr. Olson replied that it was "no problem at all," and Mr. Williams also expressed thanks to both Mr. Olson and Ms. Joplin. (Ex. S-10 at 1565, 1610.) Mr. Olson then responded: "Just let us know later today when you have more time to talk about finalizing everything," and Mr. Williams responded, "Ok." (Ex. S-10 at 1565-1566, 1611; Ex. S-7 at 59; Tr. at 32.)

On January 31, 2019, Mr. Olson texted Mr. Williams to say that he had spoken with Ms. Joplin and wanted to see if Mr. Williams "had thought about the structure any more," adding that both Mr. Olson and Ms. Joplin were "fine with doing a graduated structure." (Ex. S-4 at 6.) Mr. Olson added that he could have the documents finished that afternoon and "set it for a closing date tomorrow" and also offered to have his own and Ms. Joplin's signatures notarized beforehand. (Ex. S-4 at 6, 2.) Mr. Williams responded by proposing "50k now and the other 50k in 6 months." (Ex. S-4 at 2.) Mr. Olson replied by asking whether "50k and 25k after 3 months followed by the other 25k 3 months after that" would work. (Ex. S-4 at 2.) Mr. Williams responded that he needed to talk to Ms. Williams about it and later responded, "We are OK with those terms." (Ex. S-4 at 2-3, 16.) In response, Mr. Olson stated: "I will have Phil change the docs and send over to us. We will go get it notarized and over to you." (Ex. S-4 at 16.) Mr. Williams responded: "Sounds good. Time to make $. we all have to be there for it to be notorized [sic]." (Ex. S-4 at 16.) Mr. Olson replied, "Yeah." (Ex. S-4 at 16.) The documents were executed on the evening of January 31, 2019. (Tr. at 326.)

On February 1, 2019, Ms. Williams had $50,000 transferred from her account at Wells Fargo to Sync's account at Wells Fargo. (Ex. S-9.)

. . .

. . .

D. The Purchase Agreement and Operating Agreement

1. Purchase Agreement

The Purchase Agreement was signed and "acknowledged" by the Williamses, Mr. Olson, and Ms. Joplin on January 31, 2019, in the presence of a notary public. (Ex. S-3 at 1380-1381.) The Purchase Agreement provides, in pertinent part, the following:[25]

- Sellers are Mr. Olson and Ms. Joplin, and Buyers are Ms. and Mr. Williams. [p. 1]
- Sellers each own 50% membership, capital, and profits interest in Sync. [§ A]
- Sellers desire to sell a total interest of 19.9% in Sync ("the Interest") to Buyers, and "[e]ach seller will be selling 9.95% of their respective 50% interest to Buyers."[26] [§ B]
- In consideration of and in exchange for the Interest, Buyers agree to provide to Sellers $100,000, paid as follows:

> $50,000.00 due at or before the time of closing, with the funds wired to SYNC TITLE AGENCY on the same day,
> $25,000.00 due on or before May 1, 2019, and
> $25,000.00 due on or before August 1, 2019,
> FOR A TOTAL AMOUNT OF $100,000.00 [§ 2]

- Closing is to take place on February 1, 2019. [§ 3]
- At the Closing, "Buyer shall deliver to Seller a fully executed copy of the current and active Company's Operating Agreement, as amended, evidencing the 19.9% interest owned by Buyers." [§ 3]
- Buyers "represent and warrants [sic]" the following to Sellers as "INVESTMENT REPRESENTATIONS OF BUYERS": [§6]

> (a) Buyers understands [sic] that the Interest has not been registered under the Securities Act of 1933 (the "1933 Act") or the laws of any state, and the transactions contemplated hereby are being undertaken in reliance upon an exemption from the registration requirements of the 1933 Act, and reliance upon such exemption is based upon Buyers' representations, warranties and agreements contained in this Agreement. [§6(a)]
>
> (b) Buyers have received and carefully reviewed all information necessary to enable Buyers to evaluate the investment in the Company. Buyers have been given the opportunity to ask questions of and to receive answers from the Company concerning its business and the Interest, and to obtain such additional written information necessary to verify the accuracy

[25] Ex. S-3 at 1376-1381. The page or, if applicable, specific section/subsection in which each provision is located is indicated in brackets following the description or quote of the provision.
[26] This appears to be a mistake, as 9.95% of a 50% interest is only 4.975% of the whole.

thereof. [§6(b)]

(c) Buyers understand that the Company is a new "startup" Title Company. Buyers are aware the purchase of the Interest is speculative and involves a degree of risk. Buyers are aware that there is no guarantee that Buyers will realize any gain from the acquisition of the Interest. Buyers further understand that Buyers could lose the entire amount of the investment. [§ 6(c)]

(d) Buyers understand that no federal or state agency or other authority has made any finding or determination regarding the fairness of the offer, sale and/or issuance of the Interest or has made any recommendation or endorsement thereof or has passed in any way upon this Agreement. [§ 6(d)]

(e) Buyers: (i) are acquiring the Interest solely for Buyer's [sic] own account for investment purposes only and not with a view toward management or control of the Company . . . . [§ 6(e)]

(f) Buyers are financially able to bear the economic risk of an investment in the Interest, including the ability to hold the Interest indefinitely and to afford a complete loss of the investment in the Interest. Buyers have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the acquisition of the interest. [§ 6(f)]

- The Agreement "represents the entire agreement between the parties . . . with respect to the transactions contemplated . . . and supersedes all prior agreements with respect thereto, whether written or oral." [§ 8(a).]

Mr. Olson testified that the Williamses asked for changes to the proposed Purchase Agreement and that there were multiple revisions, although he did not recall anything specific other than changing the investment payment from a $100,000 lump sum to installment payments. (Tr. at 280-281.) Mr. Olson also testified that at the time of executing the Purchase Agreement, the Williamses told him that they had had an attorney review the offer and, additionally, that the Williamses told him that an attorney had reviewed at least some of the terms of the Purchase Agreement with them. (Tr. at 280, 285.)

Mr. Olson testified that the Williamses did not object to or request revision of the "Investment Representations of Buyers" in the Purchase Agreement. (Tr. at 284-287, 289-290; Ex. R-15 at 254-255.) Mr. Olson testified that he believed the provisions in § 6(f) (regarding the ability to withstand a complete loss of the investment and knowledge and experience in financial and business matters) were true for the Williamses because he had seen their real estate dealings with Ms. Joplin regarding purchasing properties for cash and providing proof of funds with dollar amounts of a good size; because of their general behavior; and because they seemed like "pretty sophisticated real estate investors," in that they had their own formulas for obtaining and renovating properties and "a good amount of

business knowledge." (Tr. at 287-88.) Mr. Olson testified that Mr. Olson did not reject any revisions to the Purchase Agreement requested by the Williamses. (Tr. at 289-290.)

Mr. Olson understands § 8(a) of the Purchase Agreement to mean that if there were any written or oral representations made before the Purchase Agreement, the Purchase Agreement would supersede them and become the only agreement. (Tr. at 288-289; *See* Ex. R-15 at 255.) Mr. Olson testified that the Williamses did not object to § 8(a) and that the Williamses' attorney did not either. (Tr. at 289.) Mr. Olson testified that he believed the Williamses were comfortable with all of the provisions in the Purchase Agreement and that all of the parties "were in alignment with agreeing to those terms." (Tr. at 289-290.)

Mr. Olson testified that the Purchase Agreement does not include any representation concerning when Sync would be open for business; that the Williamses would receive $5,000 per month, or any amount, through their interest in Sync; that the investment in Sync is fail-proof (and that the Purchase Agreement actually says the opposite); or that the Williamses' investment could be refunded or returned for any reason. (Tr. at 290-291.) Mr. Olson testified that he "absolutely did not" promise or represent to the Williamses before execution of the Purchase Agreement that Sync would be open at any time, that the Williamses would receive $5,000 or any other amount through their interest in Sync, that their investment in Sync was fail-proof, or that the Williamses could receive a refund or return of their investment in Sync for any reason (collectively "the claimed promises and representations"). (Tr. at 291.) Mr. Olson further testified that he did not hear Ms. Joplin make the claimed promises and representations to the Williamses before execution of the Purchase Agreement and that the reason the claimed promises and representations were not included in the Purchase Agreement was because they were never discussed. (Tr. at 291-292.) Mr. Olson asserted the terms included in the Purchase Agreement were those that had been agreed upon among the Williamses, Mr. Olson, and Ms. Joplin during their multiple meetings before the Purchase Agreement was prepared. (Tr. at 292-293.) Mr. Olson testified that he is not aware of any text message from him or email in which the claimed promises and representations were made. (Tr. at 293-294.)

Ms. Joplin testified that the Purchase Agreement required the Williamses to wire the money to the Sync bank account because Ms. Joplin "[doesn't] have a personal account, and it would be easy to

track what the money came from, the Williams[es] for that investment that they did, but paid to us. So record the 19.9 percent that they were buying from us." (Tr. at 176.) Although she acknowledged that the $50,000 was paid into the Sync bank account, Ms. Joplin maintains that the money was not Sync's money but instead the property of Ms. Joplin and Mr. Olson, to use as they saw fit. (Tr. at 153, 155, 176, 217-218, 249-251.) Mr. Olson also testified that the $50,000 paid by the Williamses was the property of Mr. Olson and Ms. Joplin, not Sync, and that the Purchase Agreement does not include any restrictions on what Mr. Olson and Ms. Joplin could do with the money. (Tr. at 283-284, 318; Ex. R-15 at 253.)

According to Mr. Olson, the Williamses requested to obtain only a 19.9% ownership interest in Sync "because they did not want to be reflected within like the public records or through like ACC requirements to be shown online." (Tr. at 332.) Mr. Olson testified: "They just said that they did not want to be shown online. Part of it was because they're just general members and they don't have daily function with business, or no managerial like respect, like that." (Tr. at 332.) Mr. Olson testified that he was unaware of any reason that he would benefit from not having the Williamses shown online. (Tr. at 332.) Mr. Olson also testified that the Williamses did not have any managerial control over Sync pursuant to the Purchase Agreement and Operating Agreement because they did not want to be involved in Sync's daily business operations. (Tr. at 333-334.)

2. Operating Agreement

The Operating Agreement was signed and "acknowledged" by the Williamses, Mr. Olson, and Ms. Joplin on January 31, 2019, in the presence of a notary public. (Ex. S-3 at 1389-1390.) The Operating Agreement provides, in pertinent part, the following:[27]

- "The Managers/Members hereby form a Limited Liability Company ('Company') subject to the provisions of the Limited Liability Company Act as currently in effect as of this date. Articles of Organization have been filed with the Arizona Corporation Commission." [§ 1.1]
- "The name of the Company shall be: SYNC TITLE AGENCY, LLC." [§ 1.2]
- The Company's registered agent shall be Mr. Olson. [§ 1.3]

[27] Ex. S-3 at 1382-1392. The page or, if applicable, specific section/subsection in which each provision is located is indicated in brackets following the description or quote of the provision.

- The Company's purpose is "to own, operate and manage a title company, as well as to perform any and all lawful business activities as directed by the Managers." [§ 1.6]
- The principal place of the Company's business shall be 7272 E. Indian School Road, Suite 540, Scottsdale, Arizona and may be changed by the Managers. [§ 1.7]
- The Managers may store Company documents at any address they choose. [§ 1.7.]
- The Members are Mr. Olson, Ms. Joplin, and the Williamses. [§ 1.8, Exhibit 1.]
- No additional members may be admitted to the Company through issuance of a new interest or a sale of a current Member's interest. [§1.9]
- The Members initially shall contribute to Company capital a total of $200, $100 from Mr. Olson and $100 from Ms. Joplin, and no Member is obligated to make additional contributions to Company capital. [§ 2.1, 2.2, Exhibit 2]
- The Company's net profits or net losses shall be determined annually and "shall be allocated to the Members in proportion to each Member's relative capital interest in the Company as set forth in Exhibit 2."[28] [§ 3.1]
- "The Managers shall determine and distribute available funds, with the presumption that such distributions shall occur monthly, unless the members unanimously agree otherwise." [§ 3.2]
- The designated Managers, Mr. Olson and Ms. Joplin, are to manage the business. [§ 4.1]
- "The Managers are vested with control, management, direction, and operation of the Company's affairs and shall have powers to bind the Company with any legally binding agreement, including setting up and operating a LLC company bank account." [§ 4.2]
- The Managers are authorized on behalf of the Company, *inter alia*, to make all decisions as to management and disposition of Company assets and to execute and deliver checks, drafts, and other orders for the payment of the Company's funds. [§ 4.3]
- Title to Company assets shall be held in the Company's name or in the name of any nominee designated by a Manager. [§ 4.7]
- "Upon request, a Manager shall supply to any member information regarding the Company or

[28] This provision, taken literally, means that the Williamses would never be allocated profits or losses because they are not included as contributors of capital on Exhibit 2 to the Operating Agreement.

its activities. Each Member or his authorized representative shall have access to and may inspect and copy all books, records and materials in the Managers(s) [sic] possession regarding the Company or its activities." [§ 4.8]

- "Any act or omission of the Manager, the effect of which may cause or result in loss or damage to the Company, if done in good faith to promote the best interests of the Company, shall not subject the Manager to any liability." [§ 4.9]
- The Managers shall cause the Company to keep the following at its principal place of business or other location:
    - A copy of the Certificate of Formation and Operating Agreement and all amendments,
    - Copies of any tax returns and reports for the three most recent years, and
    - Copies of any financial statements of the Company for the three most recent years. [§ 4.11]
- A Member or Manager who renders service to the Company shall be entitled to compensation for the value of the services. [§ 5.1]
- The Company shall reimburse a Member or Manager for direct out-of-pocket expenses incurred in managing the Company if the scope of the expenses was preapproved by the Managers. [§ 5.2]
- "The Managers shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business or other agreed location." The Managers shall select the method of accounting, which shall use a calendar year accounting period. [§ 6.1]
- "The Managers shall maintain separate capital and distribution account ledgers for each member, EXCEPT for any joint tenancy accounts, which shall be treated as a single account." A Member's capital account shall be maintained in compliance with Treasury Regulation 1.704-l(b)(2)(iv) and shall consist of the Member's initial capital contribution increased by additional capital contributions by the Member and credit balances transferred from the Member's distribution account to the capital account and decreased by distributions to the Member that reduce Company capital and the Member's share of Company losses that are charged to the capital account. [§ 6.2]

- The Managers shall close the books of account after each calendar year and send each Member a statement of the member's "distributive share of income and expense" for income tax reporting. [§ 6.3]
- The Managers may dissolve the Company at any time with consent of the majority of membership on a per capita basis and, upon dissolution, must pay the Company's debts before distributing cash, assets, and initial capital to Members. [§ 8.1]

E. Interactions and Events Following the Williamses' Investment in Sync

1. Communications Between the Parties

On February 6, 2019, Mr. Williams texted Mr. Olson a GIPHY file with a picture of Danny DeVito surrounded by the text "More Money Less Problems." (Ex. S-10 at 1545.) Then the following exchange took place between Mr. Olson and Mr. Williams:

> [Mr. Olson:] Haha somewhat true
>
> [Mr. Williams:] Lol yeah
>
> [Mr. Olson:] We are definitely excited to get things going
>
> [Mr. Williams:] [thumbs up emoji]
>
> [Mr. Williams:] **Have an ETA yet?**
>
> [Mr. Olson:] **Should be this month.** We did the nmls filing and waiting on any of the outstanding items they come back with. They had outstanding items for us when we opened the mortgage company so should be about the same. Once we get that done with we file with azdfi for the licenses with the state. Once we have those we finish the process of obtaining a title underwriter which we have been in talks with to have them prepared with us.
>
> [Mr. Williams:] Sounds good
>
> [Mr. Olson:] Trying to get it going as fast possible [sic]. I have a new platform I want to switch my brokerage to once we have the escrow/title company going.
>
> [Mr. Williams:] Great[29]

On February 22, 2019, Mr. Williams texted Mr. Olson, "**Any updates?**" (Ex. S-10 at 1547 (emphasis added); Ex. R-2 at 32 (emphasis added).) Mr. Olson responded:

> **We** got approved on the surety bond, clearance cards and **submitted applications for escrow agent license, title agent license,** and going back and forth with a few of the underwriters. Trying to get it done with as soon as possible we have a good amount of people and personal transactions

[29] Ex. S-10 at 1545-1546 (emphasis added); Ex. R-2 at 31-32 (emphasis added).

ready to get ran [sic] through that company.[30]

Mr. Williams responded with a thumbs-up emoji. (Ex. S-10 at 1547; Ex. R-2 at 33.)

On March 4, 2019, Mr. Williams texted Mr. Olson to ask for Mr. Drummond's number, which Mr. Olson provided, along with Mr. Drummond's email at Lime. (Ex. S-10 at 1547; Ex. R-2 at 33.) Mr. Olson also texted: "Let me know if there is anything I can do to help. Also we are progressing with the title company so good stuff coming." (Ex. S-10 at 1548; Ex. R-2 at 33.) Mr. Williams responded with a thumbs-up emoji. (Ex. S-10 at 1548; Ex. R-2 at 33.)

On March 14, 2019, Mr. Williams texted Mr. Olson that he had left Mr. Drummond a message and not heard back. (Ex. S-10 at 1548; Ex. R-2 at 34.) Mr. Olson responded that he had texted Mr. Drummond to call Mr. Williams, for which Mr. Williams thanked him, and then texted to ask how the Williamses were and suggest they get together for dinner or something that weekend. (Ex. S-10 at 1548-1549; Ex. R-2 at 34.)

On March 29, 2019, Mr. Williams texted Mr. Olson: "Do you have an ETA when the Title company will be up and running?" (Ex. S-10 at 1549; Ex. R-2 at 34.) Mr. Olson responded:

> We got an update earlier this week from azdfi on our application we submitted and they gave us another online portal of theirs to fill out more information for them. Should hopefully have another update from them here next week or so.
>
> They have been extremely slow with their processing for new licenses.[31]

Mr. Williams responded with a thumbs-up emoji, to which Mr. Olson responded, "It's been quite the chore with them." (Ex. S-10 at 1550; Ex. R-2 at 35.)

On April 9, 2019, Mr. Williams texted Mr. Olson: "How far out are we from opening?" (Ex. S-10 at 1550; Ex. R-2 at 35.) Mr. Olson responded:

> I stopped into azdfi yesterday for over an hour and they told us our file is going to processed [sic] next week hopefully. Once we get that from them we need to reach out to one of the title underwriters to obtain their letter that basically states we would be selling insurance on their behalf. Once we have that we go to the department of insurance to get the last license which should be really quick they said they process them a lot faster and gave an estimate of around a week.
>
> I have really been trying to get this pushed as fast as possible as we have transactions to do every week. Azdfi just has a messed up system for processing their files before. One [sic] we first submitted they asked for the

[30] Ex. S-10 at 1547 (emphasis added); Ex. R-2 at 32-33 (emphasis added).
[31] Ex. S-10 at 1549; Ex. R-2 at 34.

> paper application and then asked for us to switch to their new online portal that they switched too [sic] which has caused delay for a lot of their stuff. We just experienced it on the mortgage side of the business and has been frustrating for sure.[32]

Mr. Williams responded, "Sounds good." (Ex. S-10 at 1552; Ex. R-2 at 36.) Mr. Olson then replied: "I'll let you know here as soon as they give us either the approval or itemized list of things we need for the filing for azdfi." (Ex. S-10 at 1552; Ex. R-2 at 36.)

In approximately April 2019, the Williamses pulled out of their agreement to purchase the KB Homes new-build home, which would have been financed through KB Homes mortgage company, and lost their earnest money in the process.[33] (Tr. at 139-140, 191-192; Ex. S-10 at 1511-1513; Ex. R-1 at 5.) On April 26, 2019, in a lengthy text exchange, Ms. Williams apologized for not being in touch with Ms. Joplin and Mr. Olson for a couple of months due to Ms. Williams's having been sick and also busy and informed them that the Williamses had canceled the contract with KB Homes because Mr. Williams had lost his job, that KB Homes had kept their earnest money and would not refund it, that Mr. Williams had "messed up" when dealing with KB Homes while Ms. Williams had been sick, that Mr. Williams had purchased a new vehicle that "screwed" their financing, that the Williamses no longer qualified for financing, and that the loss of the earnest money was "[a]n expensive lesson." (Ex. S-10 at 1511-1517; Ex. R-1 at 4-8.) In the text exchange, Ms. Joplin offered to try to get the earnest money back from KB Homes, asserted that the KB Homes contract should have been contingent on the ability to get a loan because the Williamses were obtaining the loan from and had been prequalified by KB Homes, informed Ms. Williams that she should have checked with Ms. Joplin before cancelling because Ms. Joplin had another client to whom the Williamses could have assigned their contract, asserted that the Williamses could have gotten a hard money loan for the home and then refinanced later, and informed Ms. Williams that Ms. Joplin "always ha[s] plan B-x to explore before we have to loose money [sic]." (Ex. S-10 at 1513-1516; Ex. R-1 at 6-8.) Ms. Joplin tried to get the earnest money back from KB Homes but was unable to do so because the Williamses had canceled the contract without their realtor (her). (Tr. at 192.) At hearing, Ms. Joplin asserted that the Williamses "didn't care about the money." (Tr. at 216.)

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[32] Ex. S-10 at 1550-1552; Ex. R-2 at 35-36.

[33] According to a text sent by Ms. Williams, the earnest money amount was $2,500, not $10,000 as represented by the parties. (*See* Ex. R-6 at 80.)

On April 28, 2019, the Williamses got together with Ms. Joplin and Mr. Olson. (*See* Ex. S-10 at 1517; Ex. R-1 at 8-9.)

On May 2, 2019, Mr. Williams and Mr. Olson had the following text exchange:

> [Mr. Williams:] **Hey, when will the title company be running? Has been 3 months and you said it would be up and running by the end of March.**
>
> [Mr. Williams:] **We have 50k that's has [sic] been doing nothing for 3 months now.**
>
> [Mr. Olson:] **We have been going as fast as Azdfi and the department of insurance have been going. They kicked back a few items they still wanted from us the end of last week** and I have been working on getting it all out together. One of them is a financial audit of all the partners involved in the company. We reached out to our cpa to do this and will be in touch before the end of the week on what we will need from you guys to proceed forward.
>
> [Mr. Williams:] Ok
>
> [Mr. Olson:] Trying to get it going as fast as possible. The problem was with our timing it seems. Azdfi was in the middle of switching their processing for new applications and renewals which has been a little slow going to say the least
>
> [Mr. Williams:] Why is there an audit when the company has not even started yet?
>
> [Mr. Olson:] It's part of the licensing
>
> [Mr. Williams:] [thumbs-up emoji]
>
> [Mr. Olson:] We will keep you posted here the rest of the week on what we need to provide according to the cpa.
>
> [Mr. Williams:] Ok
>
> [Mr. Olson:] [thumbs-up emoji][34]

On May 4, 2019, Mr. Williams texted Mr. Olson, "Any updates?" (Ex. S-10 at 1555; Ex. R-2 at 39.) Mr. Olson responded: "We reached out to our cpa and azdfi to see exactly [sic] is needed for the audit. Have not got all that back and will likely have on Monday. I have been working on the other items they requested." (Ex. S-10 at 1555; Ex. R-2 at 39.) Mr. Williams responded with a thumbs-up emoji. (Ex. S-10 at 1555; Ex. R-2 at 39.)

On May 29, 2019, at 3:11 p.m., Ms. Williams texted Ms. Joplin and Mr. Olson: "When will Sync be open?" (Ex. S-10 at 1518; Ex. R-1 at 9.) At 4:14 p.m., Mr. Williams texted Mr. Olson: "When will sinc [sic] be open?" (Ex. S-10 at 1555.) Neither of these texts received a response. (*See* Ex. R-1 at 9; Ex. S-10 at 1555.) Then at 9:03 p.m., Ms. Williams texted Ms. Joplin and Mr. Olson: "Can I

[34] Ex. S-10 at 1552-1554 (emphasis added); Ex. R-2 at 37-38 (emphasis added).

please get an update?" (Ex. S-10 at 1518; Ex. R-1 at 9.) Ms. Joplin responded that she thought Mr. Olson had updated the Williamses that day and that she had been in court all day with a client and did not feel well. (Ex. S-10 at 1518; Ex. R-1 at 9.) Ms. Williams responded that the Williamses had not heard anything from Mr. Olson. (Ex. S-10 at 1518; Ex. R-1 at 9.) Then the following exchange occurred between Mr. Olson and Ms. Williams:

> [Mr. Olson:] Sorry just got out of dinner plans
>
> [Mr. Olson:] Currently dealing with us needing to provide a financial audit of members having $100,000+ I have filled out all the outstanding other items up to this point such as rate filings and all that they kicked back.
>
> [Ms. Williams:] What does that mean for us? $100,000 cash?
>
> [Mr. Olson:] Yeah we all need to show a liquidity of $100,000+
>
> [Ms. Williams:] Sorry I'm a bit confused. So they want to see that all the members have $100,000 total?
>
> [Ms. Williams:] At least $100k I meant
>
> [Mr. Olson:] To my understanding we need to this [sic] for each member. Since you and Marcus are a married couple I believe you count as one.
>
> [Ms. Williams:] I meant does each member (or couple in our case) have to have $100,000 or do all 4 of us need that amount total?
>
> [Ms. Williams:] I should've just called you. I'm sorry.
>
> [Ms. Williams:] Can I talk to you tomorrow?
>
> [Ms. Williams:] Good night
>
> [Mr. Olson:] Yeah we can talk tomorrow for sure.
>
> [Ms. Williams:] Sounds good. Thanks[35]

On May 31, 2019, shortly after noon, Mr. Williams telephoned Mr. Olson, and Mr. Olson did not pick up. (Ex. R-2 at 39; Ex. S-4 at 41.) Mr. Williams then texted Mr. Olson: "Megan said we need 100k in the bank now to show for the audit?" (Ex. R-2 at 39; Ex. S-4 at 43.) Mr. Olson responded: "Hey I can give you guys a call here later this afternoon when I'm done with all of my meetings. Today is swamped being the last day of the month." (Ex. R-2 at 40; Ex. S-4 at 43.) Mr. Williams responded, "Ok." (Ex. R-2 at 40; Ex. S-4 at 43.) Approximately five hours later, Mr. Williams texted Mr. Olson: "Just tried calling you." (Ex. R-2 at 40; Ex. S-4 at 43.) Approximately 90 minutes later, Mr. Olson responded: "Hey sorry I was on a conference call when you called and then my phone died. I just plugged in when we got to dinner. Can we can [sic] do tomorrow Today has been crazy being the last

[35] Ex. S-10 at 1519-1521; Ex. R-1 at 10-11.

day of the month closing out files and all." (Ex. R-2 at 40; Ex. S-4 at 43-44.) Mr. Williams replied, "Ok." (Ex. R-2 at 40.)

On June 1, 2019, at 1:10 p.m., Mr. Williams telephoned Mr. Olson twice, and Mr. Olson did not pick up. (Ex. R-2 at 41; Ex. S-4 at 45.) At the same time, Mr. Olson texted Mr. Williams to say that he was going to call him "in a few," to which Mr. Williams responded, "Okay." (Ex. S-4 at 10.) Mr. Olson then replied that both he and Ms. Joplin would be calling the Williamses later, as he was out doing errands. (Ex. S-4 at 4, 10.)

On the morning of June 4, 2019, Mr. Williams texted Mr. Olson: "Did you find out anything?" (Ex. S-4 at 45.) Mr. Olson responded: "Hey I was out yesterday sick. I'm going to try and get to the office this afternoon." (Ex. S-4 at 45.) Mr. Williams replied, "Ok."

On June 6, 2019, at 10:41 a.m., Mr. Williams texted Mr. Olson: "What did you find out?" (Ex. S-4 at 45.) Then, at 11:05 a.m., Mr. Williams texted Mr. Olson asking when Mr. Olson could talk, with Mr. Olson responding that he could at approximately 3:00 when he met up with Ms. Joplin. (Ex. S-4 at 5.) Mr. Williams replied, "Okay." (Ex. S-4 at 5.) At 4:14 p.m., Mr. Olson texted apologies to Mr. Williams because he was running behind and was at an event. (Ex. S-4 at 5.) Then at 6:48 p.m., Mr. Olson texted Mr. Williams that he was out at a dinner celebration with his neighbors and "[r]ight now I don't have a direct answer for the title company on how we can proceed." (Ex. S-4 at 7.) Mr. Williams responded: "OK I need an answer asap if it can not be done the way it it [sic] was, then we need to get our money back. Thanks." (Ex. S-4 at 7.)

On June 7, 2019, Mr. Williams sent Mr. Olson the following messages, at the following times, to which Mr. Olson did not respond:

> [10:10 am.:] The title company is not going to work. We need to get our money back asap. It has been 5 months sense [sic] we gave you the money and nothing has happened. Please contact me on how you would like to refund the money. Thank you.
>
> [2:10 p.m.:] Did you get my message?
>
> [4:59 p.m.:] Can you please let me know what you would like to do?
>
> [6:00 p.m.:] Hope you make this right[36]

On June 8, 2019, at 2:31 p.m., Ms. Williams texted Ms. Joplin and Mr. Olson: "One of you

[36] Ex. S-4 at 8, 45-47.

needs to call Marcus asap." (Ex. R-1 at 11.) At 2:42 p.m., Mr. Williams telephoned Ms. Joplin, and Ms. Joplin did not answer the call. (Ex. S-6 at 51.) At 2:43 p.m., Mr. Williams telephoned Mr. Olson, and Mr. Olson did not answer the call. (Ex. S-4 at 46-47.) At 4:10 p.m., Mr. Olson responded to Ms. Williams: "I'll send you guys out a reply here later this evening. I have been busy the last two days." (Ex. R-1 at 11.) Four minutes later, Mr. Williams texted Mr. Olson: "??" (Ex. S-4 at 47.) At 4:15p.m., Mr. Williams sent Ms. Joplin the following message:

> Right now I don't have a direct answer for the title company on how we can proceed. That was from Chris last Thursday. And before that is [sic] was over a month ago that a cpa was going to contact us. So what was 50K needed for almost 6 months ago? It has been like this from the beginning a month or two goes by with nothing. Chris told us it would be up and running within a month. Now we are at 6 months with nothing?[37]

At 4:47 p.m., Mr. Williams texted Mr. Olson a thumbs-up emoji. (Ex. R-2 at 43.) At 4:57 p.m., Ms. Williams texted Mr. Olson: "Thanks." (Ex. R-1 at 11.) Mr. Olson did not send a reply by text as stated. (*See* Ex. R-1 at 12; Ex. S-10 at 1521.) Then, at 10:55 p.m., Ms. Williams sent Ms. Joplin and Mr. Olson the following message: "There is no title company and there is not going to be in the foreseeable future. Our money needs to be returned. I will pick up a cashier's check on Monday. Where do you want to meet?" (Ex. R-1 at 12; Ex. S-10 at 1522.) Neither Ms. Joplin nor Mr. Olson responded. (*See* Ex. R-1 at 12.)

On June 9, 2019, at 9:20 a.m., Mr. Williams telephoned Mr. Olson, and Mr. Olson did not answer the call. (Ex. S-4 at 47.) At 9:26 a.m., Ms. Williams sent Ms. Joplin and Mr. Olson the following text: "Are you going to continue to ignore us? If the money is not returned in its entirety tomorrow, we're done talking to you both directly." (Ex. R-1 at 12.) Neither Ms. Joplin nor Mr. Olson responded. (*See* Ex. R-1 at 12.) Then, at 10:23 a.m., Sync's attorney, Mr. Escolar, sent the following letter to the Williamses by email:

> Dear Marcus and Megan,
>
> Good morning. Hopefully you remember me – all five of us (Marcus, Megan, Chris, Rosi and myself) had spoken on the phone a few months ago just prior to the SYNC Purchase Agreement execution.
>
> During a routine discussion this morning on other legal matters, Rosi mentioned that one or both of you might have some questions or concerns about the Sync Title startup, and that said concerns might be of a legal

[37] Ex. S-6 at 52.

> nature. Rosi isn't comfortable speaking about legal-related matters so she asked me to issue an invite for a joint call if you guys think it could be helpful. I am free most of the day, and would be happy to speak to one or both of you to do my best to address any concerns you may have. If interested in a call, drop me a line via email and we'll get one scheduled as soon as we can.
>
> Of course, you could also email any questions or concerns to me as well and I'll respond a soon as possible. I know that many people like to have important matters put "in writing" so email is certainly a productive way to bring up – and hopefully resolve – any concerns about SYNC you folks may have.
>
> Most sincerely,
>
> M. Philip Escolar, Attorney[38]

On June 10, 2019, the following text exchange occurred between Ms. Williams, Ms. Joplin, and Mr. Olson:

> [Ms. Williams:] Can one of you explain how a business partnership works when the two of you refuse to talk to us? Phil has no involvement in any of this. Have you retained him to represent one or both of you? Hey Rosi, you haven't responded to any questions this whole time. Do you think that protects you when we get to court?
>
> [Ms. Joplin:] I have been unavailable. However I suggested to have a 3rd party person to contact you and to see your concerns and since he has knowledge of the purchase contract and operating agreement and would be the best person to answer the concerns of the two of you. I do not see the breach in the agreement in our part. **We have done and are still doing everything to get the title company open including raise the funds require from you guys.** As far as I can see it. [sic] The only none [sic] performing party has been the two of you. However we do understand your situation and has been the reason why we never ask for the remaining funds in accordance to the purchase contract and operating agreement.
>
> [Ms. Joplin:] [Sent a scanned pdf]
>
> [Ms. Williams:] An llc and bank account do not equal a title company. **I want to see everything that has been submitted in order to get the company open. I also want bank statements from the Sync account back to the beginning of the year.**
>
> [Mr. Olson:] Megan I'm sorry for whatever you and Marcus are going through currently being so drastic and demanding on wanting to pull out of our arrangement but we are not. **We have put a lot of time, effort, and money into getting the company started.** Your guys sudden change of oh hey I need my funds back because it hasn't hit your opinionated timeframe is not going to fly. We are not going to be arguing with the two of you and We will be holding the contract true.
>
> We have been pretty reasonable in dealing with the start up and your guys current financial positions. You were due to make another payment of $25,000 as of May 1st which was not made. You guys just started this pushed exited [sic] when Marcus supposedly losses [sic] his job and your flip project in Tucson didn't go as planned. These items are not our issues,

[38] Ex. S-8.

> you guys need to stick with your commitments.
>
> I'm tired of seeing Marcus's nonstop back to back calls along with your texts trying to demand positions that will not happen. You guys were fully aware of what you invested in with us prior to your current situation financially. You guys agreed contractually that you could withstand the investment and see it through while the company was being started.
>
> Your guys [sic] issues with buying another investment property, losing a job, and buying a brand new suv are not our problem it's [sic] yours. At this point the only party in any kind of breach of the agreement would be yourselves. We have done everything we can to get this started and going.
>
> [Ms. Williams:] **When will Sync be open? What has the money been used for thus far?**
>
> An llc and bank account do not equal a title company. **I want to see everything that has been submitted in order to get the company open. I also want bank statements from the Sync account back to the beginning of the year.**
>
> Don't waste your time with another long winded personal attack on either one of us. We just want answers.
>
> [Mr. Olson:] Megan We have been extremely transparent with you and Marcus from day one. I will not play games with the two of you. **Go get yourself a lawyer if you want to go down this road with us.** There is nothing we are going to be doing to release any kind of funds back to you guys at this time.
>
> [Ms. Williams:] **When will Sync be open? What has the money been used for thus far?**
>
> [Mr. Olson:] **I have already given answers to this to both you and Marcus.** You guys are technically $25,000 late as of May 1, 2019. What are we going to be doing about catching this part of the contract up?
>
> If you'd like I can issue an email cure for the contract which is required per the contract. Additionally outline of what has occurred since day 1 can definitely be done first thing in the morning.[39]

Ms. Williams did not get a response from Ms. Joplin or Mr. Olson answering her questions. (Tr. at 47; *see* Ex. S-10 at 1530-1531.) Ms. Williams was never provided the records that she requested. (Tr. at 44.) After these text messages on June 10, 2019, Ms. Williams assumed that their investment money was gone and that they would not see any return on the investment. (Tr. at 47.)

Mr. Olson testified that he last had contact with the Williamses in mid-June 2019. (Tr. at 295.) Ms. Joplin testified that she and Mr. Olson could not communicate with the Williamses "because they said they're not talking to me, so I'm not going to like force myself on talking to them, waiting for them to say something." (Tr. at 200-201.)

. . .

[39] Ex. R-1 at 12-19 (emphasis added).

2. Progress Made Toward Opening Sync

When asked what she did "since the date" of execution of the Purchase Agreement and "immediately following" that "to get Sync Title open," Ms. Joplin testified:

> I, first I filed for the LLC, then I contacted a company about creating a logo, business cards and letterhead, all the stuff for that. I went to GoDaddy and I got a domain name, email, purchased space for a website through them. I interviewed two persons to be a BDM for the company, business developer, and I help [sic] find the software that we were going to use for the title company; that was Qualia. I did several meetings about getting the, the underwriter for the title side. I went to Old Republic Insurance and WFG and First American trying to get title insurance. Filled out the paperwork. I follow [sic] up with AZDFI in person like three or four times about the application that we submitted since we did it in February, and we didn't hear anything from them until like late March, early April about our application. Wanted to make sure they had everything that they needed.
>
> What else did I did [sic]? I hired a bookkeeping, Michelle Heyl, to start the books for when the company start being open and the money went in I have financial for the Williams[es] and for us and for taxes [sic].
>
> And I just like helped gather the information that it was necessary for, for starting the company [sic].[40]

Ms. Joplin's testimony about filing "for the LLC" and about obtaining the domain name, email, and website from GoDaddy was inaccurate, as those tasks were completed in 2018, shortly after Ms. Joplin and Mr. Olson decided to form a title company. (Tr. at 171-172; Ex. S-2a; Ex. S-2b; Ex. R-17 at 307-310.)

When questioned by Sync counsel, Ms. Joplin responded that she believed the "title application" was submitted on February 22, 2019. (Tr. at 165.) Ms. Joplin also responded in the affirmative when asked whether "the application for title insurance ask[ed] for any financial statements," saying that the application said that financial statements might be required for the minority members and that it was necessary to fill out a questionnaire. (Tr. at 196.) This testimony from Ms. Joplin was also inaccurate, as no evidence was presented to show that an application for a title insurance license was ever submitted for Sync. Mr. Fromholtz testified that he prepared and signed off on the Declaration of Custodian of Records dated October 1, 2020, stating that after reviewing DIFI records, he found no records reflecting that Sync, Ms. Joplin, or Mr. Olson was licensed as a title insurance

[40] Tr. at 174-175.

producer and, further, no records relating to title insurance applications for them.[41] (Tr. at 86-87; Ex. S-14.) Mr. Olson also initially responded to counsel that a "title application" had been filed on February 26, 2019, but subsequently confirmed that no "title agency application" was submitted, although he thought that an application had been started. (Tr. at 341, 353.)

On February 25, 2019, Ms. Joplin obtained a $100,000 surety bond for Sync's escrow agent license from Western Surety Company. (Tr. at 173-174; Ex. R-19.) Ms. Joplin obtained the surety bond because it was a requirement for Sync to be licensed by AZDFI. (Tr. at 174.) The surety bond cost $1,000, which was paid out of the Sync bank account. (Ex. R-11 at 187.)

On February 26, 2019, Ms. Joplin submitted to AZDFI Sync's paper application for an Escrow Agent license along with a $1,500 application fee, which was paid out of the Sync bank account. (Tr. at 193; Ex. S-11 at 1754; Ex. R-11 at 187.) The escrow agent license application, which Ms. Joplin filled out, stated that the only owners of Sync were Mr. Olson and Ms. Joplin, each of whom held 50% ownership. (Ex. S-3 at 1401.) In the area concerning current ownership, the escrow agent license application states the following:

> If applicant is owned by an entity, or if applicant is applying for an Escrow Agent or Money Transmitter License provide the entities [sic] audited financials. If owned by individuals, provide names and percentage of each person. All individuals whom directly or indirectly own 20% (15% for money transmitters) or more of the voting shares of the applicant must complete a Personal Financial Statement and a Biographical Statement.[42]

The escrow agent license application also named Michelle Heyl as the "Certified Public Accountant firm or agency which audits [Sync's] financial records."[43] (Ex. S-3 at 1401.) Ms. Joplin signed two separate affidavits on the escrow agent license application on February 26, 2019, each of which stated, *inter alia*, "[m]y answers (including attachments) are true and complete to the best of my knowledge" and "I promise to keep the information contained in this form current and to file accurate supplementary

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[41] Mr. Fromholtz testified that Sync is not a licensed title insurance producer and that only entities (not individuals) can hold title insurance producer licenses. (Tr. at 86; Ex. S-14.) According to Mr. Fromholtz, to become a licensed title insurance producer, an applicant would submit an application for a title agency license, and the application would need to include a copy of a letter from the authorized title agency for which the agency was selling products, as well as a fee. (Tr. at 86.) In Mr. Fromholtz's experience, an escrow agent is generally dual licensed as a title insurance producer. (Tr. at 87.)

[42] Ex. S-3 at 1401. We find that this is likely the source of the parties' apparent belief that the Williamses' owning less than 20% of Sync would make the licensing process easier. There is no evidence suggesting that the Williamses had ever seen this application language.

[43] Ms. Joplin testified that to her knowledge, Michelle Heyl is not a CPA. (Tr. at 232-233.)

information on a timely basis." (Ex. S-3 at 1403, 1405.)

Ms. Joplin testified that she did not include the Williamses on the escrow agent license application because "they didn't want to be included" and then when asked if she "lied on a government document because they didn't want to be included," stated: "No. We had already this prefilled out, and we just submitted it. We didn't even – it was like a mistake, but they're on the purchase agreement, they're on the operating agreement, they're on the business plan that's going to be filed." (Tr. at 224-225.) Then when asked whether it was a mistake or she decided to do it because the Williamses said they did not want to be on the application, Ms. Joplin stated: "If we needed to be included in this application right here it was a mistake because it was pre-done. We just file it. When we did the filing they did not want to be included, that was a fact." (Tr. at 225.) After confirming that the Williamses had made their $50,000 investment before the application was submitted and again being asked why the Williamses were not included on the application, Ms. Joplin stated: "They – if you're, thinking here, it says that the financial statement and biographical statement, the biographical statement stuff maybe. I don't know. We'll have to ask them why they didn't want to be included." (Tr. at 225.) Ms. Joplin was then asked why she put 50% ownership on the application when she knew that 19.9% ownership had been sold to the Williamses, and she responded: "It was an oversight. But we didn't think it mattered because they were on the purchase contract, something that can be rectified." (Tr. at 226.) When asked if that was her final answer—that it was an oversight—Ms. Joplin responded, "Yes." (Tr. at 226; *see also* Tr. at 228-230.)

On February 27, 2019, after having been contacted by Ms. Joplin, Tom Morgan of Qualia wrote the following on Ms. Joplin's behalf to an underwriter named Ross Wagner[44] to ask if Mr. Wagner could help Ms. Joplin: "Rosi Joplin is starting a new title company in Arizona called Synch [sic] Title. She has the bond and the company license on the escrow side but can't get the title bond until she gets an underwriter to submit the application." (Ex. R-9 at 175; *see* Tr. at 166.)

On March 14, 2019, Ms. Joplin set up a phone line for Sync with AT&T. (Tr. at 171; Ex. R-13 at 235-236.) The Sync bank account records show monthly payments to AT&T from April through

[44] Mr. Wagner's email address used the domain name "fnf.com." (Ex. R-9 at 175.) Ms. Joplin testified that "fnf.com" is a title company that does underwriting. (Tr. at 166.)

December 2019 totaling $989.75. (Ex. R-11 at 194-223.)

On March 18, 2019, AZDFI sent Mr. Olson an email that AZDFI had received the escrow agent license application but was unable to process the application until an online portal registration was completed. (Tr. at 164-165; Ex. R-8.) The online portal registration was completed at some point thereafter. (Tr. at 165.) When the online portal registration was completed, the owners of Sync were input as Mr. Olson and Ms. Joplin, each holding 50%. (Ex. S-11 at 1758.) Mr. Olson testified that it was Ms. Joplin who filled out the online portal information. (Tr. at 357-358.)

On March 25, 2019, Ryan Heaphy with Qualia sent Ms. Joplin an email stating that he understood she had been communicating with Jake on Mr. Heaphy's team and offering to answer any questions she might have about partnering with Qualia. (Tr. at 167; Ex. R-9 at 177.) Ms. Joplin had been working with Jake Montgomery at Qualia to set up the software to start the title company. (Tr. at 167; Ex. R-9 at 178.)

On April 4, 2019, Ms. Joplin arranged to rent an office space in Scottsdale Financial Center III, at 7272 E. Indian School Road, Suite 540, from Regus, on behalf of Sync, receiving an invoice for $2,652.58 for April 2019, including $750.38 for the office and $1,902.30 as a retainer/deposit. (Tr. at 168-169; Ex. R-10; Ex. R-12.) Ms. Joplin made monthly payments to Regus for the office from May 2019 through May 2020. (Tr. at 168-169; Ex. R-10.) With the exception of the December 2019 payment of $978.50, which came from the Sync bank account, Ms. Joplin made the monthly payments using credit cards—Visa seven times for a total of $7,047.39 and American Express seven times for a total of $8,722.77. (Ex. R-11 at 223; Ex. R-10.) The monthly invoices in 2019 were generally $978.50, but increased to more than $1,000 in January 2020. (Ex. R-10.)

On April 8, 2019, AZDFI emailed Mr. Olson to say that the application had been received and would be promptly reviewed. (Tr. at 193-194; Ex. S-11 at 1751.)

On April 18, 2019, AZDFI emailed Mr. Olson saying that the application was incomplete and listing the following "deficiencies":

- **Deficient Item 1-** Provide a "certificate of good standing".
- **Deficient Item 2-** Provide a completed "Escrow Rate Filing Form", this form is available on our website at:
- https://dfi.az/gov/escrow-agents-dfi

- **Deficient Item 3-**Provide the Company's Audited Financial Statement, ensure the net worth is $100k or more.
- **Deficient Item 4-**The Surety Bond submitted with the application was not signed!
- **Deficient Item 5-** Business Plan[45]

Mr. Olson notified Ms. Joplin when the email was received. (Tr. at 196.) According to Ms. Joplin, in response to this email, Mr. Olson worked on finalizing the business plan, the surety bond just needed a signature, and Ms. Joplin met with several different CPAs about the financial statement. (Tr. at 196.) As of April 18, 2019, the ownership information in the AZDFI portal still did not show the correct ownership interests, and Mr. Olson could not explain why. (Tr. at 358.)

AZDFI records show that Mr. Olson was emailed again concerning Sync's deficient escrow agent license application on April 19 and 20, 2019. (Ex. S-11 at 1749-1750.)

AZDFI records show that Sync's escrow agent license application status was changed to "Withdrawn" on April 21, 2019. (Ex. S-11 at 1752.)

Neither Mr. Olson nor Ms. Joplin informed the Williamses that the application had been withdrawn.[46] (Tr. at 235, 366-368.)

On May 29, 2019, Mr. Olson texted Ms. Williams and Ms. Joplin to say that there was going to be an audit requirement. (Tr. at 197-199; Ex. R-1 at 10.)

Because he was not getting responses from Mr. Olson or Ms. Joplin, Mr. Williams contacted AZDFI to find out the status of the Sync application, and AZDFI told Mr. Williams that the application had been withdrawn because AZDFI had tried to contact Mr. Olson several times by phone and email, and Mr. Olson and Ms. Joplin never provided any information AZDFI requested. (Tr. at 71.)

On March 14, 2020, CNA Surety sent DIFI a letter notifying DIFI that the $100,000 escrow agent surety bond issued to Sync by Western Surety Company would be cancelled and voided as of April 20, 2020, due to nonpayment of premium. (Ex. S-11 at 1753.)

Ms. Joplin testified that Mr. Olson had the rate sheet and the business plan done but that none of the deficiency items were submitted to AZDFI because they did not have a financial audit and were

[45] Ex. R-8 at 172; Ex. S-11 at 1750-1751; Tr. at 194-195. At hearing, Mr. Fromholtz testified that the statement "ensure the net worth is $100k or more" in Deficient Item 3 was erroneous, the result of an "internal bug." (Tr. at 83.) This was a revelation to Respondents. (*See* Tr. at 204-206, 249, 350-351, 377.)

[46] Mr. Olson testified that AZDFI did not notify Respondents that the application had been withdrawn. (Tr. at 371-372.)

required to submit the entire package. (Tr. at 230-231.) When asked why no financial audit occurred, Ms. Joplin said: "Because they, the Williams[es] said they didn't want to us to speak to them any more." (Tr. at 231.) Ms. Joplin testified that she and Mr. Olson contacted three different CPA companies to figure out what needed to be done but that because it was right after tax season, everyone was busy and kept pushing them back. (Tr. at 231.) Ms. Joplin and Mr. Olson did not send an auditor to the Williamses' house. (Tr. at 231.)

Ms. Joplin testified that she and Mr. Olson were unable to reapply for the escrow agent license "[b]ecause of this litigation and the Williams[es], I mean, they're still owners." (Tr. at 234.) When it was pointed out that the case at the Commission had not started until November 2020, Ms. Joplin stated: "Because they said not to talk to us, and we were waiting to see what they were – what we needed to do. We couldn't do anything." (Tr. at 234.) Ms. Joplin believed that Ms. Williams had meant that Ms. Joplin also should not contact the Williamses by email, text, or letter because Ms. Williams had indicated that she was going to have legal counsel. (Tr. at 234.) Ms. Joplin also testified that her own legal counsel advised her not to communicate with Ms. Williams. (Tr. at 235.) According to Ms. Joplin, she and Mr. Olson will reapply for an escrow agent license "[w]hen this is done and over." (Tr. at 235.)

Ms. Joplin testified that she did not tell the Williamses that the escrow agent license application had been withdrawn, that it would have been up to Mr. Olson to tell them, and that she did not recall whether he ever told her that he had notified the Williamses. (Tr. at 235.) Ms. Joplin testified that she only communicated with the Williamses about real estate, not about Sync, unless she was asked a question about Lime or Sync. (Tr. at 236-237.) Ms. Joplin also testified that Ms. Williams had said she did not want to be involved in the day-to-day part of Sync, and that it was Mr. Williams and Mr. Olson who communicated regularly about Sync and its progress. (Tr. at 237.) According to Ms. Joplin, Mr. Williams also had asked not to be bothered about the day-to-day part of Sync, so she and Mr. Olson were "respecting their wishes" by not providing updates unless the Williamses asked for them. (Tr. at 238.) Ms. Joplin also questioned whether it would have even mattered if she had told Ms. Williams about the application being withdrawn because AZDFI only gave them three days to cure the deficiencies. (Tr. at 237.)

Ms. Joplin testified that now that she and Mr. Olson know that they do not need a financial audit showing $100,000 in assets, they will be able to reapply for Sync to get an escrow agent license and will be able to have Sync up and running as soon as the license is approved by DIFI. (Tr. at 249.)

3. Use of the Williamses' Investment Funds

Division witness Mr. Turley, a CPA who interned with a forensic accounting firm and at the U.S. Securities and Exchange Commission in Washington, D.C., reviewed and analyzed various financial records related to Sync, including approximately 1,800 pages of bank statements, credit card statements, and other banking documents for Sync, Joplin Realty, Lime, and Top Realty as well as some personal bank accounts. (Tr. at 105-107.) Mr. Turley determined that Mr. Olson and Rob Olson were both signers on the Top Realty bank account, that Ms. Joplin was the only signer on the Joplin Realty account, and that both Mr. Olson and Ms. Joplin were signers on the Sync bank account. (Tr. at 107-108.)

The Sync bank account was opened in November 2018. (Tr. at 108.) As of January 31, 2019, the balance in the Sync account was $36. (Ex. R-11 at 184.) On February 1, 2019, with the Williamses' transfer and an associated service charge, the Sync account's balance went to $50,021. (Ex. R-11 at 187.) Between February 4 and June 30, 2019, two additional deposits were made, totaling $25,553.22 (one for $1,704.47 from Joplin Realty and one for $23,848.75 from a legal settlement). (Ex. R-11 at 187-205.) During the same time period, withdrawals/debits from the Sync account totaled $74,966.99, leaving the Sync account with a balance of $622.23 as of July 1, 2019. (*See id.*)

Mr. Turley prepared summaries of deposits/credits and withdrawals/debits for the Sync account from February 1 through June 11, 2019. (Tr. at 108-110; Ex. S-22.) During the period from February 1 through March 10, 2019, there were multiple withdrawals from the Sync bank account, including five cash withdrawals totaling approximately $15,000; credit card payments totaling approximately $4,000; a $1,500 payment to AZDFI, a $1,000 payment to SuretyBonds.com, and various other small payments. (Tr. at 110; Ex. S-22 at 1.) On March 10, 2019, the ending balance in the Sync bank account was approximately $29,543, which Mr. Turley stated represented the remainder of the Williamses' investment funds. (Tr. at 110-111; Ex. S-22 at 1.) During the period from March 11 to June 11, 2019, there were multiple cash withdrawals totaling $29,700, multiple credit card payments totaling

approximately $22,553, and various small transactions totaling approximately $438. (Tr. at 111; Ex. S-22 at 2.) On June 11, 2019, the ending balance in the Sync bank account was approximately $742. (Tr. at 111; Ex. S-22 at 2.)

Mr. Turley examined the cash withdrawals from the Sync bank account between February 1 and June 11, 2019, and cash deposits into other accounts during that period and found the following activity:[47]

Date	Cash Withdrawal Amount from Sync Account	Cash Deposit in Same Amount made to Account for:	Signer on Withdrawal
2/4/19	$3,000	Top Realty	Mr. Olson
2/20/19	$3,000	Top Realty	Mr. Olson
2/21/19	$ 200	Joplin Realty	Unknown – ATM
3/6/19	$3,000	Top Realty	Mr. Olson
3/25/19	$3,000	Joplin Realty	Ms. Joplin
4/15/19	$ 300	Joplin Realty	Unknown – ATM
4/30/19	$6,000	Lime Mortgage	Mr. Olson
5/16/19	$8,400	Lime Mortgage	Ms. Joplin
Total	**$26,900**		

Mr. Turley also identified the following withdrawals from the Sync account for which he did not locate corresponding deposits into another account:[48]

Date	Cash Withdrawal Amount from Sync Account	Signer on Withdrawal
2/7/19	$6,000	Ms. Joplin
3/11/19	$3,000	Ms. Joplin
6/11/19	$9,000	Ms. Joplin
Total	**$18,000**	

Mr. Turley was not able to determine what happened to the funds that were withdrawn from the Sync bank account by Ms. Joplin and not deposited into another account. (Tr. at 113-115.)

Mr. Turley also reviewed credit card payments made from the Sync bank account for an American Express card held by Mr. Joplin, an American Express card held by Joplin Realty, a Credit One card held by Ms. Joplin, and a Floor & Décor card held by Ms. Joplin. (Tr. at 115-116; Ex. S-25.) Through May 24, 2019, cumulative payments in the amount of $26,455.56 were made to these credit

[47] Tr. at 113-115; Ex. S-24.
[48] Tr. at 113-115; Ex. S-24.

card accounts from the Sync bank account, with the following breakdown by credit card account:[49]

Credit Card Account	Total Payments from Sync Bank Account
Joplin Realty American Express	$14,871.71
Mr. Joplin American Express	$ 7,368.88
Ms. Joplin Floor & Décor	$ 2,405.70
Ms. Joplin Credit One	$ 1,809.27
Total	**$26,455.56**

To determine what charges the payments covered, Mr. Turley reviewed the credit cards' activity beginning with statements with start dates between December 5 and 15, 2018, and broke the charges down into categories, finding that the cards had a cumulative starting balance of approximately $18,200 and that the new charges were made, in order of magnitude, for rent, bars/restaurants, mortgage loan origination software, general software, luxury clothing (e.g., Prada, Neiman Marcus), travel/vacation, other retail, charitable/political donations, interest/fees, legal, Zillow, medical, advertising, health club, general business, groceries, gas/transportation, pet, and entertainment. (Tr. at 116-119; Ex. S-25.) Mr. Turley did not identify which charges were made prior to January 31, 2019, and which were made thereafter. (Tr. at 120-121.)

Mr. Turley's review of the Sync bank account activity did not reveal any payments made to the Williamses. (Tr. at 117.)

Respondents' exhibits show that Respondents spent approximately $20,322.41 toward Sync operating expenses between February 1, 2019, and May 7, 2020, as follows:[50]

Sync Operating Expense	Amount Paid
Surety Bond Fee Paid from Sync Bank Account	$1,000.00
Escrow Agent License Fee Paid from Sync Bank Account	$1,500.00
Office Rent Paid with Visa Card	$7,047.39
Office Rent Paid with American Express Card	$8,722.77
Office Rent Paid from Sync Bank Account	$978.50
AT&T Bill Payments from Sync Bank Account	$989.75
Sync Bank Account Fees	$84.00
Total	$20,322.41

Respondents also provided an exhibit suggesting that $588.70 was spent on Quickbooks, $71.96 was spent on GoDaddy renewals, and $350 was spent on a logo and business cards, with most of these

[49] Tr. at 115-118; Ex. S-25.
[50] *See* Ex. R-10; Ex. R-11; Ex. R-12; Ex. R-13.

expenses paid by Ms. Joplin's credit card. (*See* Ex. R-20.)

Based on Respondents' own evidence, it is apparent that more than half of the investment funds transferred to Sync by the Williamses were used toward Respondents' other businesses and their own personal expenses rather than toward Sync's startup and operating costs.

4. Securities Regulatory Filings Made with the Commission

Mr. Woerner testified that:

- Neither Sync nor the interests in Sync were registered with the Division. (Tr. at 91; Ex. S-1a.)
- Neither Ms. Joplin nor Mr. Olson was a licensed dealer or salesman. (Tr. at 91; Ex. S-1b; Ex. S-1c.)
- According to Sync's Articles of Amendment dated August 16, 2018, Ms. Joplin and Mr. Olson are the managing members of Sync. (Tr. at 92; Ex. S-2b.)
- Mr. Woerner was unable to find any Form Ds or other exemption filings with the Commission from Sync. (Tr. at 101.)

III. Witness Credibility

The Division asserts that Ms. Joplin and Mr. Olson are not credible, and Respondents assert that the Williamses are not credible. The arguments made in that regard are set forth here.

A. Division Position

In its Opening Brief, the Division cited five distinct statements in support of its argument that neither Ms. Joplin nor Mr. Olson is a credible witness:

- According to the Division, Ms. Joplin "testified that the name Sync Title had been decided by [Mr.] Olson and Mr. Williams while she was tending to the babies [which] is a complete fabrication" because Sync was formed in May 2018, before Respondents met the Williamses.[51]
- Ms. Joplin testified that she did not look to a bank to finance Sync and that she and Mr. Olson "didn't look for an investor. They just mentioned that they wanted to be a part of it." (Div. Br. at 11 (quoting Tr. at 210).) The Division asserts that this is inconsistent with Mr. Olson's

[51] Div. Br. at 11 (citing Tr. at 157).

December 10, 2018, email reaching out to the see if the Williamses were interested in investments other than flipping houses. (Div. Br. at 11.)

- In response to a request for an update from Mr. Williams, Mr. Olson replied that they "got approved on the surety bond, clearance cards, and submitted application for escrow agent license, title agent license and going back and forth with a few underwriters trying to get it done as soon as possible," although Mr. Olson subsequently testified that the title agent license was "[n]ever like submitted because we were still dealing with AZDFI at the time." (Div. Br. at 12 (quoting Tr. at 535).) The Division asserts that the lie was to keep the Williamses believing that Sync would be open soon, as Mr. Olson had previously (February 6, 2019) responded to Mr. Williams's text asking for an "ETA" by saying that it "[s]hould be this month." (Div. Br. at 12 (quoting Ex. S-10 at 1546; Tr. at 335-336).)
- Ms. Joplin told the Williamses that she was a CPA, although Ms. Joplin is not a CPA. (Div. Br. at 12 (citing Tr. at 53, 63, 99; Ex. S-19).) The Division acknowledges that Ms. Joplin denied telling the Williamses that she was a CPA but asserts that her denial is not credible because her real estate firm's website made the same false claim for years. (Div. Br. at 12 (citing Tr. at 99).) The Division asserts that if Ms. Joplin did not check the websites, it was because she did not care about the truth. (Div. Br. at 12.)
- The escrow agent application filed with AZDFI falsely claimed that only Ms. Joplin and Mr. Olson were members of Sync, with each owning 50%, although Ms. Joplin and Mr. Olson knew that this information was untrue when the application was filed on February 26, 2019. (Div. Br. at 12.)

In its Reply Brief, the Division argues that the written communications between Respondents and the Williamses corroborate the Williamses' testimony and that documentary evidence showing other false statements by Respondents further discredits their denials. (Div. R. Br. at 11.) The Division makes the following additional arguments concerning Ms. Joplin's and Mr. Olson's lack of credibility:

- The Division asserts that both Mr. Olson and Sync misrepresented that Sync would be open within a month, as testified by Mr. Williams and corroborated in the February 6, 2019, text messages between Mr. Williams and Mr. Olson concerning an ETA and further corroborated

by Mr. Williams's message to Ms. Joplin in June 2019 stating that "Chris told us it would be up and running within a month." (Div. R. Br. at 11 (citing Tr. at 66; Ex. S-10 at 1546-1547; and quoting Ex. S-6 at 2).) According to the Division, Ms. Joplin's failure to deny that Mr. Olson had made the statement further corroborates Mr. Williams's testimony. (Div. R. Br. at 11 (citing Ex. S-6 at 2).)

- The Division asserts that Sync, Ms. Joplin, and Mr. Olson misrepresented that they would refund the Williamses' investment if Sync failed to open. (Div. R. Br. at 12.) The Division points out that the Williamses both testified that these statements were made. (Div. R. Br. at 12 (citing Tr. at 39, 70).) According to the Division, the documents corroborate the Williamses' testimony because Mr. Williams first sent Mr. Olson a message asking how their money was going to be refunded because "nothing ha[d] happened" after five months, Mr. Williams sent Ms. Joplin the same type of message the next day, and then Ms. Williams sent Ms. Joplin the same type of message several days later, which the Division argues shows that the basis for the refund request would be clear to Ms. Joplin and Mr. Olson. (Div. R. Br. at 12 (citing Ex. S-10 at 1524, 1559; Ex. S-6).) The Division asserts: "Neither [Ms.] Joplin nor [Mr.] Olson responded to [Mr. Williams's] messages to express any doubt about the assumption that Sync failing to open entitled the Williamses to a refund." (Div. R. Br. at 12.) Additionally, the Division asserts that Ms. Joplin did not respond to Ms. Williams's message by denying that the Williamses were entitled to a refund if Sync failed to open, instead challenging Ms. Williams's conclusion that there was no title company. (Div. R. Br. at 12 (citing Ex. S-10 at 1524).) According to the Division, Respondents could have responded by denying that a refund had been guaranteed, and their failure to make such a denial reflects that they had made such a guarantee, consistent with the Williamses' testimony. (Div. R. Br. at 12 (citing Tr. at 77).)
- The Division asserts that Mr. Olson and Sync misrepresented that Sync was a fail-safe investment, as Mr. Williams testified. (Div. R. Br. at 13 (citing Rr. at 70).) The Division asserts that Mr. Williams's testimony that Mr. Olson many times stated that Sync was "basically fail-safe" was corroborated by Mr. Olson's January 11, 2019, text that they "definitely have a slam dunk going on." (Div. R. Br. at 13 (quoting Tr. at 70; Ex. S-10 at 1540, 1566).) The Division

points out that Mr. Olson justified the "slam dunk" comment as accurate based on his "linear integration model" and his and Ms. Joplin's ownership of real estate companies and argues that this justification further corroborates Mr. Williams's testimony about the "fail-safe" statements being made because Mr. Williams's testimony also described the linear integration concept. (Div. R. Br. at 13 (citing Tr. at 70, 342-343).) The Division adds that the "slam dunk" comment was fraudulent by itself, even if it wasn't used to bolster oral statements about a fail-safe investment, because the Securities Act "places a heavy burden upon the offeror not to mislead potential investors in any way," it is inaccurate to call any investment a "slam dunk," and calling the Sync investment a "slam dunk" was an untrue statement of material fact. (Div. R. Br. at 13 (quoting *Trimble v. Amer. Sav. Life Ins. Co.*, 152 Ariz. 548, 553 (App. 1986) ("*Trimble*")).)

- The Division asserts that Respondents omitted to tell the Williamses that Ms. Joplin and Mr. Olson would make personal use of some of the Williamses' investment funds and that Respondents' statements that the Williamses' investment funds would be used to obtain office space, pay software subscription fees, and hire a title agent were misleading because Respondents omitted to tell the Williamses that some of the funds would go to the personal use of Ms. Joplin and Mr. Olson. (Div. R. Br. at 13-14 (citing Tr. at 38-39, 66; Ex. S-22; Ex. S-23; Ex. S-24; Ex. S-25).) According to the Division, Ms. Joplin's and Mr. Olson's testimony that the entire investment amount was always for their personal use is not credible because when Mr. Olson broached the subject of investment in Sync, his message said that he and Ms. Joplin "ha[d] been considering taking on a partner or doing something to assist with growing faster." (Div. R. Br. at 14 (quoting Ex. S-10 at 1577).) According to the Division, the reference to assisting with growing faster shows that Mr. Olson wanted startup capital to fund Sync's growth, not a payment to himself and Ms. Joplin for personal use. (Div. R. Br. at 14.) The Division adds that this is further bolstered by Mr. Williams's June 2019 message expressing frustration because Sync was not yet open and asking what the $50,000 was needed for almost six months earlier. (Div. R. Br. at 14 (citing Ex. S-6).) Further, the Division asserts, Respondents' use of some of the investment funds for the specific Sync business purposes to which the Williamses testified corroborates the Williamses' testimony about what they had

been told, as does the payment of the investment funds into the Sync bank account and the fact that there is no evidence Sync had any other source of startup capital. (Div. R. Br. at 14 (citing Ex. S-3 at 1367).)

- The Division argues that the denials of Ms. Joplin and Mr. Olson are discredited by other documented false statements:
  - The Division cites Mr. Olson's February 22, 2019, text saying that the title agent license application had been submitted, which was discussed in the Division's opening brief. (Div. R. Br. at 14-15 (citing Ex. S-10 at 1547; Tr. at 353).)
  - The Division asserts that Ms. Joplin's "false claims" to be a CPA with a college degree discredit her denial and that her explanations for the CPA and college degree claims are "nonsensical" because JoplinRealtyAZ.com stated the following: "Notary Public and CPA. I graduated from the University of Southern California with a degree in Finance . . . . I am the Owner and Designated Broker of Joplin Realty . . . ." (Div. R. Br. at 15 (quoting Ex. S-18; Tr. at 98).) The Division points out that the reference to "Joplin Realty" in the biographical text shows that the language had been updated for publication on Joplin Realty's website, contrary to Ms. Joplin's claim that the language had been written by someone at a previous firm she worked for. (Div. R. Br. at 15 (citing Tr. at 133).) The Division also cites Ms. Joplin's testimony that she caused the language to be removed by contacting GoDaddy, and the lack of evidence that anyone other than Ms. Joplin has the authority to change the content of the JoplinRealtyAZ.com website, as support for the conclusion that Ms. Joplin either authorized or personally updated the biographical information with the false claims on her website. (Div. R. Br. at 15.) The Division also observes that although Ms. Joplin claimed that the false biographical information "followed" her when she went to JoplinSchaffler, as "an automatic feed from the MLS," that story is inconsistent with the updated language on the JoplinRealtyAZ.com website, the press release posted to her LinkedIn account, and the biographical information posted on her Pinterest account, all of which are worded differently. (Div. R. Br. at 15-16 (quoting Tr. at 133-134, 239-240; Ex. S-26 at 1-2, 4).) The Division also contends that Ms. Joplin's

testimony that she gave someone else control of her LinkedIn profile is "implausible" because she told Ms. Williams that she was a CPA. (Div. R. Br. at 16 (citing Tr. at 53, 240).) The Division asserts that the only plausible explanation is that Ms. Joplin has repeatedly misrepresented herself as a CPA with a finance degree and failed to make up a credible explanation for the hearing in this matter. (Div. R. Br. at 16.)

- Finally, the Division asserts that the absence of false and misleading statements in the Purchase Agreement does not refute that Respondents made those statements verbally, stating that it is not uncommon for securities sales to be induced with positive statements that are not reflected in or that are even contradicted by the subscription documents. (Div. R. Br. at 16.) The Division cited a case in which a promoter told some investors that an investment was low risk even though the company's offering expressly stated that it was high risk. (Div. R. Br. at 16 (citing Decision No. 76450 (November 7, 2017) at 11-12, 21).) The Division posits that because the Williamses had been told that the investment in Sync was a "slam dunk" and fail -afe, they felt no need to document the assurances given by Mr. Olson and Ms. Joplin. (Div. R. Br. at 17.) The Division also observes that investors have no duty of due diligence themselves and are allowed to take securities promoters at their word. (Div. R. Br. at 16-17 (citing *Trimble*, 152 Ariz. at 553).)

B. <u>Respondents' Position</u>

Respondents assert that of the five statements cited as lies by the Division, "three are mere and minor clerical oversights . . . and two are not lies or misrepresentations at all, but rather the Division's clumsy and embarrassing misreading of the statement in question." (R. Br. at 29.) Respondents further argue that "these five alleged statements pale in comparison and importance to the rather obvious untrue statements made by the Williams[es] regarding the alleged 'promises' . . . that have no evidentiary support (but plenty of evidence suggesting the promises were not made)." (R. Br. at 29.) Respondents address each of the five statements as follows:

- Respondents assert that Ms. Joplin's statement regarding the naming of Sync was "clearly . . . an aside" in which Ms. Joplin was describing how Sync's name was created based on the vision for the company to synchronize the parts of a real estate transaction. (R. Br. at 30 (citing Tr. at

157).) Respondents further assert that Ms. Joplin "preface[d] it with 'by the way," an extremely common phrase in English that signals that the speaker is about to deliver such an aside."[52] (R. Br. at 30.) Respondents characterize the Division's reading of the passage as "frankly, strange." (R. Br. at 30.)

- Respondents argue that the Division's reading of Ms. Joplin's testimony about not seeking investments is "hyper-rigid and unrealistic [for] a witness that speaks English as a second language with rapid-fire tempo." (R. Br. at 30.) Respondents assert that if the entire block of testimony is read in context, it is obvious that Ms. Joplin was describing how Ms. Williams learned about Lime and expressed an interest in being involved in Lime or something like it, how Ms. Joplin told Ms. Williams that they were not taking investors in Lime and planned to finance Sync with revenues from their other businesses, how Ms. Joplin then discussed it with Mr. Olson, and how Ms. Joplin and Mr. Olson then decided to offer the Williamses an opportunity to invest in Sync. (R. Br. at 30-31 (citing Tr. at 210-212).) Respondents assert that "this is a harmless passage when read as a whole" and in context. (R. Br. at 31.)
- Regarding Mr. Olson's text to Mr. Williams asserting that the title application had been filed, Respondents assert that the statement was "slightly incorrect" because the title application had been started but not submitted, but "to characterize this as a 'lie' is rather laughable, just as it is laughable to allege that this 'lie' was a necessary or concocted plan to mislead the Williams[es]." (R. Br. at 31.) Respondents assert that because the text was sent by Mr. Olson on February 6, 2019, only six days after the Purchase Agreement was signed, there was no tension or pressure that would cause Mr. Olson to think that he needed to mislead the Williamses at that time. (R. Br. at 31.)
- Respondents admit that the "optics" concerning Ms. Joplin's being labeled a CPA "were not good" but assert that "there was a very rational, careful detailed explanation given in testimony as to how this error occurred." (R. Br. at 31.) Respondents assert that "administrators" at Cambridge Properties created the biographical write-up, which Ms. Joplin did not review; that

[52] This statement by counsel for Respondents is untrue, as Ms. Joplin prefaced her statement about the name Sync with "And" and never said "by the way" at all. (*See* Tr. at 157.)

Ms. Joplin did not tell the administrators to state in the write-up that she was a CPA; and that the write-up followed Ms. Joplin and was automatically imported into the Joplin Realty website when she left Cambridge Properties. (R. Br. at 31-32.) Respondents assert that Ms. Joplin contacted the Association of Realtors to correct the error as soon as she became aware of it and that she "persuasively testified that she never told anyone that she was a CPA." (R. Br. at 32.)

- Regarding the membership information on the escrow agent application submitted to AZDFI, Respondents assert that the "Division makes a colossal leap from a simple, understandable clerical oversight and tries to insinuate that a dark lie has been fostered upon the State." (R. Br. at 32.) Respondents assert that the application "was a mere and easily correctable oversight" that occurred because the application had been mostly filled out before the Williamses invested but was not submitted until afterwards, and "respondents simply forgot to amend the application to include the Williams[es]." (R. Br. at 32 (citing Tr. at 328-332).) Respondents add: "There was no possible or conceivable motive for, and nothing to gain by, respondents telling the DIFI that only [Mr.] Olson and [Ms.] Joplin were members," particularly because the Williamses had signed agreements to the contrary. (R. Br. at 32-33.) Respondents add that Ms. Joplin's promptly informing the Williamses about the need for audited statements showing $100,000 net worth[53] showed that the omission of the Williamses was only an oversight because it demonstrated that Respondents did not intend to hide the Williamses' member status. (R. Br. at 33.)

C. Resolution

The Division's characterization of Ms. Joplin's testimony concerning the naming of Sync is inconsistent with the testimony when it is considered in context, which is more consistent with Respondent's characterization of the testimony,[54] although Respondents misrepresent in their brief that

[53] This message was sent by Mr. Olson, not Ms. Joplin. (See Tr. at 197-198; Ex. R-1 at 10.)

[54] The Division asserted that Ms. Joplin lied about the creation of the name with the following testimony:

> Q. Okay. And, well, actually, at these meetings, thinking of them aggregately, just at the two meetings that you just mentioned, what was discussed at those meetings?
>
> A. I was mainly like with the baby, but Marcus and Chris were the ones talking more about the company and what, what were our, our vision for the company, how we are going to like draw the business from the real estate, the mortgage company into the title company, and creating a formula to like synchronize everything. And that's how we, you know, came up with the name Sync Title too.

Ms. Joplin prefaced her comment with "By the way." The testimony of Ms. Joplin concerning the naming of Sync does not reduce her credibility.

The Division's characterization of Ms. Joplin's testimony concerning Respondents not looking for an investor and the Williamses asking to be a part of Sync is, as Respondents assert, overly rigid. Respondents' description of this particular portion of Ms. Joplin's testimony is reasonable. This portion of Ms. Joplin's testimony does not reduce her credibility.

As the Division asserts, Mr. Olson lied to Mr. Williams about having submitted the title agent license application and admitted during his testimony that the title agent license application had not been submitted. This incident reduces Mr. Olson's credibility.

As the Division asserts, Ms. Joplin represented herself as a CPA and a college graduate on her own brokerage website, on LinkedIn, and on Pinterest. Ms. Joplin's story to explain the presence of this untruthful information in her various biographical statements does not withstand scrutiny due to the different phrasing used and the presence of her brokerage's updated name in the biographical information on the website. At best, Ms. Joplin's story would show that she lacks attention to detail and has a disregard for the content of marketing materials for her business, neither of which seems consistent with her being a real estate broker. We conclude that Ms. Joplin either created these misrepresentations herself or, after being aware of them (such as when she left Cambridge Properties and when JoplinSchaffler transitioned to JoplinRealty), decided to maintain them. These false representations reduce Ms. Joplin's credibility.

As the Division asserts, Respondents filed with AZDFI an escrow agent license application that untruthfully identified Ms. Joplin and Mr. Olson as the only members of Sync, each of whom was asserted to hold a 50% interest. At hearing, Mr. Olson attributed this solely to the application having been filled out well in advance of being submitted, while Ms. Joplin gave several different and inconsistent explanations—that the Williamses did not want to be included and specifically had sought

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> Q. Oh, actually, could you, just for the record, what did you mean by that, came up with the name Sync Title?
>
> A. Because we synchronized all the parts of the real estate transaction into one, so we wanted to show it on the name.

Tr. at 157. We do not interpret Ms. Joplin's answers here as an assertion that Sync was named at one of these meetings. She speaks to why Sync was named, which corresponds to discussions that occurred at the meetings, and not when Sync was named.

only a 19.9% interest so that they would not need to be included, that she was confused about whether the Williamses needed to be included, and that the application had been filled out well in advance of being submitted and was not updated before it was filed because she forgot. Both Ms. Joplin and Mr. Olson testified that the Williamses requested to obtain only a 19.9% interest in Sync so as to stay out of the public eye. (Tr. at 201-202, 332.) The Williamses themselves testified that Respondents told them that they were looking for an investor to make an investment and hold a little less than a 20% interest in the company and that Mr. Olson had told them that if they held less than a 20% interest in Sync, they would not need to be included on the paperwork provided to the state in the application for the title company, which would make the licensure process faster and smoother because they would not need to be involved in licensing requirements and background checks. (*See* Tr. at 30-31.) There was no exploration at hearing concerning whether the Williamses truly had a desire not to be listed on public records and, if so, why. Regardless of the reason for the Williamses not being included on the AZDFI escrow agent license application, however, Respondents submitted the application although it contained false information, and there are indications that Respondents did so purposefully—to avoid what they believed to be complications that would arise if the Williamses were included—either at the Williamses' request or, more plausibly, because of their own mistaken understanding of licensing application requirements. Ms. Joplin's testimony concerning why the Williamses were not included on the escrow agent license application was not credible and shows that Ms. Joplin knowingly signed and submitted to AZDFI an application form that included false information and had no compunction about it. This incident reduces the credibility of both Ms. Joplin and Mr. Olson.

Witness credibility determinations for other specific testimony are set forth below in describing resolutions for specific issues to which the witness testimony pertains.

IV. Legal Issues to Be Resolved

A. Whether the Sync Membership Interests Are Securities.

A.R.S. § 44-1801(27) defines "security," in pertinent part, as follows:

> "Security":
>
> (a) Means any note, stock, treasury stock, bond, commodity investment contract, commodity option, debenture, evidence of indebtedness, certificate of interest, participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription,

> transferable share, **investment contract**, viatical or life settlement investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, real property investment contract or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

The U.S. Supreme Court and Arizona courts recognize that an "investment contract" is a transaction in which a person invests money in a common enterprise with the expectation of earning profits solely through the efforts of others. (*SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) ("*Howey*"); *Daggett v. Jackie Fine Arts, Inc.*, 152 Ariz. 559 (App. 1986) ("*Daggett*").)

1. Division

The Division asserts that the Sync interest sold to the Williamses was an investment contract under *Howey*. (Div. Br. at 12-13 (citing *Howey*, 328 U.S. at 298-299).) The Division asserts that the three prongs of the *Howey* test are met because (1) the Williamses wired $50,000 for an investment in Sync, thereby "commit[ting] [their] assets to the enterprise in such a manner as to subject [themselves] to financial loss"[55]; (2) the Sync investment meets the vertical commonality test for a common enterprise because there is "a clear correlation between the success of the investor and the success of the promoter," due to the Operating Agreement's provision that distributions would occur monthly from Sync's available funds, *i.e.,* only if Sync was successful and had such funds;[56] and (3) the Sync investment required the efforts of others ("the essential managerial efforts" of Ms. Joplin and Mr. Olson to have Sync licensed and ready for business and to generate business) to make the Sync enterprise successful and result in financial returns and income for the Williamses.[57]

2. Respondents

Respondents acknowledge that the Sync interest purchased by the Williamses was a security under the Securities Act and that the Purchase Agreement identifies the interest as an unregistered security. (R. Br. at 13.)

. . .

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[55] Div. Br. at 13 (quoting *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976)).
[56] Div. Br. at 13-14 (citing *Dagget v. Jackie Fine Arts, Inc.*, 152 Ariz. 559, 565 (App. 1986)).
[57] Div. Br. at 14-15 (citing *Lawrence J. Warfield v. Michael Alaniz*, 569 F.3d 1015, 1023-24 (9th Cir. 2009); *Sullivan v. Metro Productions, Inc.*, 150 Ariz. 573, 577 (App. 1986)).

3. Resolution

The 19.9% interest sold by Respondents and purchased by the Williamses meets the *Howey* test for an investment contract and thus was a security under the Securities Act.

B. Whether Respondents Offered and Sold the Securities.

A.R.S. § 44-1801(16) and (22) define "Offer to sell" or "offer for sale" and "Sale" or "sell," in pertinent part, as follows:

> "Offer to sell" or "offer for sale" means an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value . . . .
>
> . . . .
>
> "Sale" or "sell" means a sale or any other disposition of a security or interest in a security for value and includes a contract to make such sale or disposition. . . . .

1. Division

The Division asserts that Ms. Joplin, Mr. Olson, and Sync offered and sold the securities by soliciting the Williamses to invest in Sync and by taking the Williamses' investment funds in exchange for the Sync membership interests. (Div. Br. at 14.) Specifically, the Division points to the December 2018 text from Mr. Olson asking if the Williamses were interested in investments other than house flipping; Ms. Joplin and Mr. Olson's meetings with the Williamses to discuss the investment; the signing of the Purchase Agreement on January 31, 2019; and the Williamses providing $50,000 as their initial investment in the membership interest in Sync on February 1, 2019. (Div. Br. at 14.)

2. Respondents

Respondents do not dispute that Respondents sold the Williamses a security—the investment contract for the 19.9% membership interest in Sync. (*See* R. Br. at 13.) Nor do they dispute that an offer to sell the investment contract was made to the Williamses. (*See* Tr. at 148-149, 263.)

3. Resolution

Ms. Joplin and Mr. Olson offered and sold the Williamses an investment contract for the 19.9% membership interest in Sync, which was a security under the Securities Act, in return for $50,000 that was paid at the time of the sale (wired the next morning due to bank hours) and two additional payments of $25,000 to be paid at later times. By virtue of the actions of its managing members, who are its

agents, Sync also engaged in selling the security. (*See* A.R.S. § 44-1801(10)(b), (14), (17).)

C. Whether Respondents Were Registered as Salesmen or Dealers, and the Securities Were Registered in Arizona.

A.R.S. § 44-1841(A) provides, in pertinent part, that it is unlawful to sell or offer for sale within or from Arizona any securities unless the securities have been registered under A.R.S. Title 44, Chapter 12, Article 6 or 7.

A.R.S. § 44-1842 provides, in pertinent part, that it is unlawful for a dealer to sell or offer to sell any securities or for any salesman to sell or offer for sale any securities within or from Arizona unless the dealer or salesman is registered under A.R.S. Title 44, Chapter 12, Article 9.

1. Division

The Division asserts that Respondents were not registered as salesmen or dealers and that the investment contract was not registered as a security in Arizona, all in violation of A.R.S. §§ 44-1841 and 44-1842.

2. Respondents

Respondents did not dispute that none of the Respondents were registered as salesmen or dealers or that the investment contract was not registered as a security in Arizona. Rather, Respondents assert that the investment contract fell under the non-public offering exemption of A.R.S. § 44-1844(A)(1). (R. Br. at 13.)

3. Resolution

The evidence establishes that none of the Respondents was registered as a salesman or dealer as required by A.R.S. § 44-1842 and that the investment contract was not registered as a security in Arizona as required by A.R.S. § 44-1841. (*See* Ex. S-1a; Ex. S-1b; Ex. S-1c.)

D. Whether Respondents Proved the Registration Exemption at A.R.S. § 44-1844(A)(1).

A.R.S. § 44-1844(A)(1) provides that the registration requirements of A.R.S. §§ 44-1841 and 44-1842 "do not apply to . . . [t]ransactions by an issuer not involving any public offering." This exemption is often referred to as the "non-public offering exemption."

Arizona follows settled federal securities law in interpreting Arizona's securities statutes.

(*Wales v. Ariz. Corp. Comm'n*, 249 Ariz. 263, 270 (App. 2020) ("*Wales*").) Under applicable caselaw, exemptions are construed narrowly, and the burden of proof is on the person claiming the exemption. (*Sorrell v. SEC*, 679 F.2d 1323, 1326 (9th Cir. 1982) (citing *SEC v. Blazon Corp.*, 609 F.2d 960 (9th Cir. 1979)).) Thus, to establish eligibility for an exemption from securities registration requirements, Respondents must show strict compliance with all aspects of the relevant exemption provision. (*Wales*, 249 Ariz. at 269 (citing *State v. Baumann*, 125 Ariz. 404, 411 (1980) ("*Baumann*")).)

In determining whether the non-public offering exemption applies, Arizona, consistent with the 9th Circuit Court of Appeals, applies the test set forth in *SEC v. Ralston Purina Co.*, 346 U.S. 119, 125 (1953) ("*Ralston Purina*"), as well as the test set forth in *SEC v. Murphy*, 626 F.2d 633, 644-645 (9th Cir. 1980) ("*Murphy*"). (*See Wales*, 249 Ariz. at 270-271; Decision No. 76683 (May 22, 2018) (setting forth the *Murphy* test), affirmed in *Wales.*)

1. Division

The Division asserts that Respondents have failed to satisfy their burden of proving that the offer and sale of securities by them to the Williamses fell within the registration exemption at A.R.S. § 44-1844(A)(1). (Div. Br. at 15 (citing *Baumann*, 125 Ariz. at 411 (1980)).)

According to the Division, the ultimate test for applicability of the non-public offering exemption is "whether the Williamses were able to fend for themselves," while the *Murphy* factors are relevant to this determination. (Div. Br. at 15 (citing *Ralston Purina*, 346 U.S. at 125; *Murphy*, 626 F.2d at 644-645).) The *Murphy* factors are (1) the number of offerees, (2) the sophistication of the offerees, (3) the size and manner of the offering, and (4) the relationship of the offerees to the issuer. (Div. Br. at 15 (citing *Murphy*, 626 F.2d at 644-645).) The Division argues that the *Murphy* factors are "just ways to consider the ultimate question of whether the offerees could fend for themselves" and that, in this case, the Williamses could not because they were both unsophisticated and uninformed. (Div. R. Br. at 2 (citing *Murphy*, 626 F.2d at 646).) The Division argues that Respondents failed to establish the applicability of the non-public offering exemption by failing to prove that the Williamses were sophisticated investors or that they had access to registration statement information. (Div. R. Br. at 10 (citing *Murphy*, 626 F.2d at 647).) According to the Division, the Williamses needed the protections of the Securities Act because they could not fend for themselves and did not have access to

registration statement information, which due to their lack of sophistication, they could not have effectively used to protect themselves even if they had it. (Div. R. Br. at 10-11 (citing *Ralston Purina*, 346 U.S. at 125).)

The Division provided the following analyses of the *Murphy* test factors:

a. Number of Offerees

The Division asserts that because the Williamses were aware of another couple who had been offered the Sync investment, and Mr. Olson testified that he had discussed Sync with another couple who did not invest, this meant there were at least two offers of investments in Sync. (Div. Br. at 16 (citing Tr. at 270).) The Division also asserts that the number of offerees is not determinative of whether the non-public offering exemption applies, because an offering to few may be public, and an offering to many may be private. (Div. Br. at 16 (citing *Doran v. Petroleum Management Corp.*, 545 F.2d 893, 901 (5th Cir. 1977) ("*Doran*"); *Ralston Purina*, 346 U.S. at 125)).)

b. Sophistication of the Offerees

The Division asserts that the Williamses "were by no means sophisticated investors," although Respondents attempted to make it seem like they were. (Div. Br. at 16.) The Division contends it is "bizarre" that Respondents would consider the Williamses sophisticated when Ms. Joplin and Mr. Olson knew that the Williamses were not accredited investors and that their prior investment activity related to flipping houses and making money from their own efforts rather than making passive investments. (Div. Br. at 16 (citing Ex. S-10 at 1574; Tr. at 27)).) The Division argues that both Ms. Joplin and Mr. Olson lack credibility and that the Williamses' ability to trust Ms. Joplin and Mr. Olson with up to $100,000 so quickly after the investment was offered demonstrates the Williamses' lack of sophistication. (Div. Br. at 16-17.) The Division disagrees with Ms. Joplin's testimony that the Williamses were sophisticated investors because Ms. Williams knew that she wanted to put down 10% earnest money and knew the date she wanted to close on a property, arguing that a sophisticated investor would be unlikely to use and pay a commission to a buyer's agent if the investor could find the property and close the deal on her own.[58] (Div. Br. at 17 (citing Ex. R-6; Tr. at 141-144).) The

[58] We observe that the commission to the buyer's agent is not necessarily paid by the buyer. (*See* Ex. R-16 at 269, 280, 291, 302 (contract § 8(f)).)

Division also asserts that Ms. Williams's choosing not to fight for a return of the earnest money from KB Homes was "the opposite of what a sophisticated investor would do" rather than a sign of sophistication and suggests that Ms. Williams either did not know how or chose not to try to have her earnest money returned.[59] (Div. Br. at 17.)

The Division argues that the Williamses invested in Sync because they "believed their new buddies," who told them that Sync was fail-safe and would be open within the month and that they would get their money back if Sync did not open. (Div. Br. at 17 (citing Tr. at 32, 39, 66, 76).) According to the Division, the Williamses invested in Sync "because they were conned." (Div. Br. at 17.)

In its Reply Brief, the Division argues that Respondents have failed to prove that the Williamses were sophisticated investors, as required for the second *Murphy* factor, because Respondents have not even shown that the Williamses were sophisticated in their house-flipping investments. (Div. R. Br. at 2.) According to the Division, the evidence shows that the Williamses bought and resold only seven houses, shows that one of the flips in 2019 "didn't go as planned" somehow, and suggests that the house-flipping investments may have been a wash overall because the Williamses always had available investment capital of $200,000 to $250,000, not more. (Div. R. Br. at 2 (quoting Ex. S-10 at 1527; citing Tr. at 55, 191).) The Division further argues that although Ms. Williams had a methodology for calculating specific offering prices for homes, no evidence was presented to establish that the methodology was sound. (Div. R. Br. at 2.) Additionally, the Division argues, when Ms. Joplin was asked whether she believed based on her experience as a real estate agent that Ms. Williams used "good judgment" in her offer amounts, Ms. Joplin "conspicuously failed to agree with that characterization." (Div. R. Br. at 2-3 (citing Tr. at 145-146).)

The Division also reiterates its argument that the Williamses' loss of earnest money for the KB Homes new-build home demonstrated their lack of sophistication, because Ms. Joplin's texts about it show that the earnest money was lost due to the Williamses' error, as there were other options available, and Ms. Williams herself even acknowledged in a text that the situation "wasn't handled right." (Div.

[59] We note that Ms. Williams was apparently ill at the time this occurred and that it was Mr. Williams who handled the communications with KB Homes about the earnest money. (*See* Ex. S-10 at 1511-1517; Ex. R-1 at 4-8.)

R. Br. at 3 (quoting Ex. S-10 at 1517; citing Ex. S-10 at 1513, 1515-1517).) According to the Division, the lost earnest money shows "that the Williamses were still amateur real estate investors who had a lot to learn and were not yet sophisticated." (Div. R. Br. at 3.)

Further, the Division argues, even if the Williamses were sophisticated investors for purposes of flipping houses, that does not mean that they were sophisticated for purposes of purchasing membership interests in a startup title company. (Div. R. Br. at 3.) The Division cites *Andrews v. Blue*, 489 F.2d 367, 370-371, 373 (10th Cir. 1973) ("*Andrews*"), for the principle that one may be a sophisticated real estate investor while at the same time being "a babe in the woods when it [comes] to stocks." (Div. R. Br. at 3 (quoting *Andrews*, 489 F.2d at 373 n.3).) The Division contends that there is a difference between the Williamses' investing in real estate, where their funds are secured by the real property over which they have full control, and investing in Sync, a startup company over which they have no managerial control, which put them in the position of relying on Ms. Joplin and Mr. Olson to manage and to follow the requirements to become a licensed title company. (Div. R. Br. at 3-4 (citing Tr. at 50, 70).) Additionally, the Division asserts, Respondents did not provide evidence establishing that the Williamses had experience investing in companies at all, experience in investing specifically in "risky startup companies," experience in analyzing financial statements, experience with title insurance companies other than as customers, or experience with Mr. Olson's "linear integration" business model. (Div. R. Br. at 4.)

The Division further asserts that the manner in which the investment occurred supports that the Williamses were not sophisticated investors, "instead show[ing] that they were influenced primarily by an adverse attorney." (Div. R. Br. at 4.) The Division points out that there were two versions of the sales contract—the first written by Mr. Olson, which the Williamses had their own attorney review, only to be advised that it had so many issues that it needed to be rewritten almost entirely, and the second written by Mr. Escolar. (Div. R. Br. at 4 (citing Tr. at 34-35, 216; Ex. S-10 at 1541).) The Division contends that there is no evidence the Williamses themselves carefully reviewed the first version of the sales contract written by Mr. Olson. (Div. R. Br. at 4.) Further, the Division asserts, the first version of the sales contract was never negotiated, because Mr. Olson and Ms. Joplin instead hired an attorney to "redo the docs," resulting in the Purchase Agreement, which was "entirely different"

from the first version and was sent to the Williamses on January 25, 2019. (Div. R. Br. at 4-5 (quoting Tr. at 35; Ex. S-10 at 1542). Additionally, the Division asserts, there is no evidence that the Williamses closely reviewed the Purchase Agreement because, had they done so, they would have noticed and raised the erroneous reference to "stock" in paragraph 5 of the Purchase Agreement.[60] (Div. R. Br. at 5 (citing Ex. S-3 at 1377).) The Division argues that there is also no evidence that the Williamses consulted their own attorney concerning the Purchase Agreement, as they instead discussed it with Mr. Escolar, "an adverse attorney who represented [Mr.] Olson and [Ms.] Joplin," on January 30, 2019. (Div. R. Br. at 5 (citing Ex. S-10 at 1563).) The Division points out that the Williamses thanked Mr. Olson for having Mr. Escolar "clarify things" for them, displaying no understanding that Mr. Escolar did not represent their interests, and then wired their $50,000 investment only two days after the discussion with Mr. Escolar. (Div. R. Br. at 5 (quoting Ex. S-10 at 1610; citing Ex. S-10 at 1566).) The Division also points out that Mr. Escolar was the attorney representing Sync in this matter and opposing a Commission order providing restitution to the Williamses. (Div. R. Br. at 5.) The Division adds that the Williamses' lack of sophistication was also evident because there was no negotiation of the terms of the first version of the sales contract, and the only evidence of a negotiated change to the Purchase Agreement is that the payment schedule was changed to be three installment payments rather than one lump sum payment. (Div. R. Br. at 5 (citing Tr. at 35, 280-281).)

The Division also argues that an investor's net worth is relevant to the investor's investment sophistication and that the Williamses' lack of accredited investor status and net worth lower than $1 million weighs against finding them to be sophisticated. (Div. R. Br. at 5-6 (citing *Doran*, 545 F.2d at 902; Ex. S-10 at 1574).) An investor's formal education is also relevant to the investor's investment sophistication, the Division argues, and the Williamses' lack of formal education weighs against a finding of investor sophistication. (Div. R. Br. at 6 (citing *SEC v. International Scanning Devices, Inc.*, 1977 WL 1033 at *6 (D.N.Y. 1977)[61]; Tr. at 54).) An investor's occupation is also relevant to

[60] Attributing to the Williamses the ability to scrutinize the Purchase Agreement as a legal document and to detect errors therein seems inconsistent with the Division's position that the Williamses are not sophisticated investors. Nevertheless, the Williamses' apparent failure to notice the "stock" reference in the Purchase Agreement supports that they are not sophisticated investors.

[61] This opinion from the District of New York is not reported in F.Supp. In it, the District Court expressly notes the offerees' occupations but does not explain how they were factored into its analysis. (*See SEC v. International Scanning Devices, Inc.*, 1977 WL 1033 at *6.) No Commission rule prohibits citation of unpublished opinions, but the practice is prohibited before

investment sophistication, the Division argues, and Ms. Williams is a stay-at-home mother while Mr. Williams is an auto technician. (Div. R. Br. at 6 (citing Hicks, *Exempted Trans. Under Securities Act 1933* § 11.66[62]); Tr. at 23, 62).)

Finally, the Division argues that the Williamses' lack of sophistication is evidenced by the questions that they apparently did not ask—e.g., What was Sync's startup capital? When was Sync projected to be profitable? What was Sync's plan to develop business beyond referrals from Mr. Olson, Ms. Joplin, and their colleagues, if those referrals alone would not sustain it? How competitive is the local title insurance industry? (Div. R. Br. at 6-7.) The Division asserts that there is no evidence that the Williamses ever asked any such questions or that the Respondents provided data that would answer them. (Div. R. Br. at 7.)

c. Size and Manner of the Offering

The Division asserts that even if the Williamses were the only offerees, the manner of the offering would still be of concern because Ms. Joplin, retained as a buyer's agent by Ms. Williams, owed fiduciary duties to Ms. Williams, something about which Ms. Joplin expressed knowledge during the hearing. (Div. Br. at 18 (citing Tr. at 236-237).) The Division implies that because Mr. Olson is also a real estate broker and mortgage broker, he would also be familiar with fiduciary duties. (*See* Div. Br. at 18.) The Division asserts that despite their status as fiduciaries, Ms. Joplin and Mr. Olson "buddied up" to the Williamses, with Mr. Olson coming along to look at houses with them even though Ms. Williams had only retained Ms. Joplin's services, and subsequently offering the Williamses investments. (Div. Br. at 18.) The Division asserts that the Williamses' trust in Ms. Joplin and Mr. Olson was misplaced and that the Williamses relied on the word of Ms. Joplin and Mr. Olson rather than insisting on written disclosure documents as sophisticated investors would have done. (Div. Br. at 18.)

d. Relationship of the Offerees to the Issuer

The Division argues that the Williamses needed the protection of the Securities Act because they needed the information that securities registration would have provided. (Div. R. Br. at 7.) Under

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Arizona courts, for both state and federal court opinions. (*See, e.g.*, Ariz. S. Ct. R. 111(c)(1); U.S. Ct. of App. 9th Cir. R. 36-3; *Walden Books Co. v. Dept. of Revenue*, 198 Ariz. 584, 589 (Ct. App. 2000).)

[62] In future, the Division should provide copies of treatise entries with its opening brief if it desires to rely upon them.

Murphy, the Division argues, the Commission may **only** conclude that the Williamses did not need the protection of the Act if the Williamses had such a relationship with Sync that they had access to or had disclosed to them the sort of information that registration reveals. (Div. R. Br. at 7 (citing *Murphy*, 626 F.2d at 647).) The Division argues that Respondents failed to prove the fourth *Murphy* factor because they failed to prove that some of the information even existed, and "[n]o degree of relationship could provide access to information that did not exist." (Div. R. Br. at 7.)

The Division points out that under 15 U.S.C. §§ 77aa(13), (14), and (25), a registration statement must include a recent and certified balance sheet, a disclosure of how investment funds will be used with approximate amounts, and disclosure of payments to be made to company officers, while the evidentiary record in this case does not establish that Sync had such documents. (Div. R. Br. at 7.) Further, the Division observes, 15 U.S.C. § 77aa(29) requires a registration statement to include a written opinion of counsel about the legality of the securities being issued, and the evidentiary record in this case does not establish that such an opinion exists. (Div. R. Br. at 7-8.) According to the Division, because none of the above documents existed, Respondents failed to prove that the Williamses had access to them, as required by *Murphy*. (Div. R. Br. at 8 (citing *Wales*, 249 Ariz. at 271 (App. 2020) (non-public offering exemption was not proven where offerees did not receive certified balance sheets, officer compensation information, or written opinion of counsel)).)

The Division adds that even if the information that securities registration would have provided had existed in this case, the Williamses could not have relied on getting such important business information from Ms. Joplin and Mr. Olson, who often "stonewalled them or lied about Sync's progress." (Div. R. Br. at 8.) The Division notes that neither Ms. Joplin nor Mr. Olson told the Williamses when the AZDFI deficiency letter was received on April 18, 2019, and that Mr. Olson only told Mr. Williams about it on May 2, 2019, in response to a question about when Sync would be open, and even then lied about how long he had known about the deficiencies. (Div. R. Br. at 8 (citing Ex. R-8; Ex. R-2 at 37).) The Division argues that after revealing the existence of the deficiency letter to Mr. Williams, Mr. Olson "then spent weeks stringing the Williamses along before eventually ignoring them." (Div. R. Br. at 9.) Specifically, the Division points to Mr. Olson's May 2, 2019, text to Mr. Williams that Mr. Olson and Ms. Joplin had contacted their CPA and would be in touch before the end

of the week on what was needed from the Williamses to move forward; the lack of communication by the end of the week that caused Mr. Williams to ask Mr. Olson for an update on Saturday, May 4, 2019; Mr. Olson's response that they would likely know what was needed on Monday; and then Mr. Olson's failure to provide an update about the issue for 25 days, until Mr. Williams asked on May 29, 2019, when Sync would be open. (Div. R. Br. at 9 (citing Ex. S-10 at 1553-1555).) The Division points out that Mr. Williams had not objected to providing information to a CPA for a financial audit in early May; that Mr. Olson did not respond to Mr. Williams's May 29, 2019, request for an update, or to Mr. Williams's subsequent phone calls two and three days later; that Mr. Olson did not provide a substantive response three days later when Mr. Williams asked him if he had found out anything; and then did not respond when Mr. Williams asked him five days later what he had found out. (Div. R. Br. at 9 (citing Ex. S-10 at 1555-1556, 1558-1559).) By the time Mr. Williams texted that the title company was not going to work out and that the Williamses needed their money back, the Division argues, the Williamses had been waiting more than a month to be contacted by a CPA about an audit that had not been explained to them. (Div. R. Br. at 9-10 (citing Ex. S-10 at 1559).) The Division also argues that Ms. Joplin ignored and then refused an important information request—Ms. Williams's June 10, 2019, request to see Sync's bank statements and all documents filed to get Sync started—first ignoring the request, then "launch[ing] into a 268-word diatribe," then telling Ms. Williams to go get a lawyer, and never informing Ms. Williams that she would be allowed to view the documents in person at Sync's office. (Div. R. Br. at 10 (citing Ex. S-10 at 1525-1530).) Additionally, the Division argues, the Williamses were never informed that the $50,000 they invested would not be used for Sync but would instead be used to pay the personal expenses of Ms. Joplin and Mr. Olson and the other entities they control. (Div. Br. at 18.)

2. Respondents

Respondents assert that it is "patently clear" that they were relying on the non-public offering exemption in A.R.S. § 44-1844(A)(1) from the inception of the sale. (R. Br. at 13.) Respondents assert that to establish eligibility for the exemption, Respondents must show compliance with the statutory requirements of A.R.S. § 44-1844(A)(1) (which is identical to 15 U.S.C. § 77d(a)(2)), using as a guide the interpretations of the same language given by the SEC and federal or other courts. (R. Br. at 13

(citing *Baumann*, 125 Ariz. 404; 1996 Ariz. Sess. Laws, Ch. 197, § 11(C); *Sell v. Gama*, 231 Ariz. 323, 327 (2013)).)

Respondents assert that the "leading recent Ninth Circuit case on the non-public offering," *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072 (9th Cir. 2010), held:

> [T]he applicability of [the exemption] should turn on whether the particular class of persons affected need the protection of the [Securities] Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering. Stated another way, **a limited distribution to highly sophisticated investors, rather than a general distribution to the public, is not a public offering**.[63]

According to Respondents, the inquiry regarding applicability of the non-public offering exemption must focus on the issuer and the offerees and must pay particular attention to the relationship between the two. (R. Br. at 14 (citing *Cook v. Avien, Inc.*, 573 F.2d 685, 691 (1st Cir. 1978), cited with approval in *Murphy*, 626 F.2d 633).)

Like the Division, Respondents assert that the *Murphy* test must be used to determine the applicability of the exemption. (R. Br. at 14.) Unlike the Division, Respondents assert that all four *Murphy* test factors favor Respondents. (R. Br. at 20.) Respondents set forth the following analyses of the *Murphy* test factors:

a. Number of Offerees

Respondents assert that while there is no rigid limit to the number of offerees to whom a private offering can be made, and the number of offerees is not decisive of this factor, with more offerees comes a greater likelihood that the offering is public. (R. Br. at 14 (citing *Ralston Purina*, 346 U.S. at 125; *Murphy*, 626 F.2d 633).) According to Respondents, although the Division asserts that the interest in Sync may have been offered to another couple, "highly detailed testimony revealed that this other couple was not offered a chance to invest in Sync; rather, they were friends and colleagues of [Mr.] Olson and they approached the principals of Sync seeking to become working partners (not investors) with [Mr.] Olson and [Ms.] Joplin in Sync" because the husband had previously owned his own title agency. (R. Br. at 16 (citing Tr. at 269-272).) Respondents assert that because the Williamses were

[63] R. Br. at 13-14 (quoting *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1090-1091 (9th Cir. 2010) (citation omitted) (emphasis added) ("*Platforms Wireless*")). This was not the holding of the *Platforms Wireless* case. As to applicability of the non-public offering exemption, the court held that the transactions at issue were not registered and that no exemption applied. (*Platforms Wireless*, 617 F.3d at 1092.)

the only offerees, this first factor "heavily dictates in favor of application of the exemption." (R. Br. at 16.)

b. Sophistication of the Offerees

Respondents argue that *Murphy* did not provide a rigid test for sophistication and that Respondents' evidence in this matter "should rebut any evidence or inferences provided by the Division"[64] that the Williamses lack sophistication. (R. Br. at 14.) Respondents disagree with the Division's use of "accredited investor" status as an indication of sophistication, arguing that "accredited investor" is a "rule-defined designation" and "straight-forward certification" received if a person/entity is established to have certain professional certifications or related degrees or finance licenses, a large net worth, or a large salary, whereas the question of sophistication under *Murphy* is "a subjective case-specific inquiry into whether an investor can 'fend for themselves' in the specific context of the offering in dispute." (R. Br. at 14-15 (citing *Murphy*, 626 F.2d at 644).) Thus, Respondents assert, the lack of accredited investor status is "wholly irrelevant" to whether an investor is sophisticated. (R. Br. at 15.)

Respondents also argue that "[c]ontrary to the rather insulting attempt on the part of the Division to minimize the intelligence, skill and sophistication of successful real estate investors, both common sense and the parties' own testimony reveal that the Williams[es] were savvy, sophisticated and technologically nimble investors." (R. Br. at 16 (citing Div. Br. at 16-17).) To support this, Respondents assert that in the 90 days after meeting Ms. Joplin, the Williamses "carefully crafted at least seven and as many as ten very specific types of offers for residential properties across the state" with Ms. Joplin as their buyer's agent. (R. Br. at 16 (citing Tr. at 140).) Respondents further assert that the Williamses would research the properties independently and then "use their own proprietary formular to come up with the optimal offer" for each property, with the resulting offer amounts being "highly specific . . . , such as $101,250." (R. Br. at 16 (citing Tr. at 145-146).) Additionally, Respondents assert, the Williamses would perform their own research on comparable properties and "dictate all of the material terms of the proposed offer in a rapid fire, knowing, and sophisticated fashion," leaving Ms. Joplin the "busy work" of putting the terms into the offer sheet. (R. Br. at 16-17

[64] R. Br. at 14. We believe that Respondents meant to say "implications" rather than "inferences."

(citing Ex. R-5 at 65-66; Ex. R-6 at 101, 125).) According to Respondents, these communications[65] show that Ms. Williams was not a "neophyte" but instead "an investor that comfortably speaks in the codes and parlance of the industry and . . . knows what they are doing." (R. Br. at 17.) Respondents further assert that Mr. Williams was also fully involved in the real estate investments and would "run things" when Ms. Williams was sick or busy with other things.[66] (R. Br. at 17.)

Respondents criticize the Division's argument that the Williamses' loss of their KB Homes earnest money shows a lack of sophistication, calling the argument "terribly unpersuasive" and asserting that it "illogically conflates 'sophistication' with 'universally favorable results and outcomes.'" (R. Br. at 17 (citing Div. Br. at 16-17).) Respondents argue that rather than showing a lack of sophistication, the text messages concerning the earnest money show that the Williamses "handled the loss with impressive sophistication." (R. Br. at 17.) Respondents attribute the loss of the earnest money[67] as "solely due to Marcus Williams losing his job coupled with the purchase of a new car . . . , which . . . disqualified them from financing." (R. Br. at 17 (citing Ex. R-1 at 5-8).) Respondents argue that Ms. Williams's messages to Ms. Joplin show that Ms. Williams was already aware of the possible avenues to recover the earnest money suggested by Ms. Joplin but that it was "no big deal" and she was moving on. (R. Br. at 17-18 (quoting Ex. R-1 at 5-8).) Respondents point out that Ms. Williams indicated that both she and Mr. Williams had attempted to recover the funds from KB Homes, but KB Homes was unwilling to work with them, arguing that this also showed "substantial sophistication" because the Williamses had attempted to recover the funds, determined it was not worth any additional time and effort in light of KB Homes' intransigence, and felt that they could absorb the loss. (R. Br. at 18 (citing Ex. R-1 at 5-8).)

c. Size and Manner of the Offering

Respondents cite *Murphy* for the principal that a small offering made directly to offerees "rather than through the facilities of public distribution such as investment bankers or the securities exchange" is more likely to be determined non-public. (R. Br. at 15 (quoting *Murphy*, 626 F.2d at 646).)

[65] In a text specifically cited by Respondents, Ms. Williams wrote: "$101,250 cash $10,000 earnest money COE 10/26/18 Title Co – your choice No home warranty. Response time 10/11@11am." (Ex. R-6 at 101; *see* R. Br. at 16.)

[66] Respondents did not cite to any evidentiary support for this assertion.

[67] Respondents refer to $10,000 in earnest money, although Ms. Williams identified the amount as $2,500. (*See* R. Br. at 17; Ex. R-6 at 80.)

Respondents also cite *Doran*, which they state was relied upon by *Murphy*, for the principal that "an offering characterized by personal contact between the issuers and the offerees free of public advertising or intermediaries such as investment bankers or securities exchanges" is more likely to be determined non-public. (R. Br. at 15.)

According to Respondents, regarding the third factor, "it is *impossible* to conceive of a fact pattern that is more favorable to respondents than the undisputed facts in this case" because the offer was made in a direct text message between friends and discussed in person between friends, and did not involve any advertising, marketing, intermediaries, websites, or institutions. (R. Br. at 18 (citing Tr. at 263-264, 277-280; Ex. R-5 at 66).) Respondents further argue that by informing Mr. Olson "that they were unable to participate in hard money lending investment," the Williamses had "made it patently clear they were looking for passive investment opportunities," so "[Mr.] Olson quite naturally offered the Sync opportunity to [the Williamses]." (R. Br. at 18.) Respondents argue that because the offer exclusively involved personal contact, from inception through execution, the third factor favors Respondents. (R. Br. at 18 (citing Tr. at 277-280).)

d. Relationship of the Offerees to the Issuer

Respondents argue that the fourth factor is actually a two-part test that initially requires the fact finder to determine whether the relationship between the issuer and offeree afforded the offeree access to the type of information that registration discloses. (R. Br. at 15.) If this type of relationship exists, Respondents assert, the analysis regarding the fourth factor ends, as it has been satisfied. (R. Br. at 15 (citing *Murphy*, 626 F.2d at 647).) If this type of relationship is not found to exist, Respondents assert, the issuer must demonstrate that the issuer affirmatively disclosed or affirmatively made available all of the information that registration would reveal. (R. Br. at 15-16 (citing *Murphy*, 626 F.2d at 647).)

Respondents argue that analysis of the fourth factor can be "rife with pitfalls" because the relationship of each offeror to each offeree must be examined. (R. Br. at 18-19.) According to Respondents, however, the relationship between the offerees and issuers in this case "can only be classified as a trusting and close friendship with significant real estate business ties." (R. Br. at 19.) Respondents argue that the hundreds of text messages between the parties are a "rock-solid record of months [of] close contact, friendship, and business ties completely separate from any mention of Sync."

(R. Br. at 19.) More importantly, Respondents assert, the texts between the parties before and during negotiation of the Purchase Agreement show both a close relationship that was "quite open in terms of informational flow" and that Respondents "had no problem sharing or obtaining any information requested by the Williams[es]." (R. Br. at 19 (citing Ex. R-1; Ex. R-2; Ex. R-3; Ex. R-4; Ex. R-5).) Respondents further assert that "after the Williams[es] had their attorney review the purchase contract[,] [Mr.] Olson and [Ms.] Joplin had no issue with implementing any and all changes to the Purchase [Agreement] desired by the Williams[es]." (R. Br. at 19 (citing Tr. at 324-325).) Thus, Respondents argue, because the relationship was "personal, close, trusting, and obviously very open to information exchange," and the Williamses "indisputably . . . had access to whatever information they desired" because they received timely responses to their many questions, the fourth factor also favors Respondents. (R. Br. at 19-20.)

3. Resolution

The *Murphy* factors concerning the number of offerees and the size and manner of the offering lean in favor of Respondents, as there is conflicting evidence concerning whether the Sync investment opportunity was offered to any other persons, and the manner of the offering to the Williamses was private, conducted through text messages and direct conversation between the issuers and the offerees. However, Respondents have not met their burden of proof as to the *Murphy* factors concerning the sophistication of the offerees and the relationship of the offerees to the issuers. Moreover, Respondents have failed to establish that the Williamses did not need the protection of the Securities Act. Rather, the evidence clearly establishes that the Williamses needed the protection of the Securities Act in their dealings with Respondents.

Contrary to Respondents' assertions, the evidence does not establish that the Williamses were sophisticated investors for purposes of the investment in Sync. The most glaring example of the Williamses' lack of sophistication is their reliance on Mr. Escolar, an attorney who represented the interests of Respondents in creating the Purchase Agreement and Operating Agreement, to answer their questions concerning the two documents. (*See* Tr. at 36; Ex. S-7 at 58-59; Ex. S-10 at 1565-1610.) Mr. Olson's testimony that the Williamses had the Purchase Agreement itself reviewed by their own

attorney is not credible,[68] as the Williamses' testimony contradicted this, the many text messages do not reflect this, and the timing of the Williamses' initial receipt of the Purchase Agreement on January 26, 2019 (Saturday), and the execution of the Purchase Agreement on January 31, 2019 (Thursday), makes it extremely unlikely that the Williamses had sufficient time to consult with their attorney.[69] (*See* Ex. S-5; Ex. S-3 at 1376, 1380.) Moreover, if the Williamses had consulted with their own attorney concerning the Purchase Agreement, they likely would have relied on their own attorney, rather than Mr. Escolar, to address their questions and concerns, as they had done with the draft agreement. (*See* Tr. at 35; Ex. S-7 at 55; Ex. S-10 at 1541, 1581, 1592.)

Additional evidence pointing to the Williamses' lack of sophistication includes their failure to obtain a return of their earnest money for the KB Homes new purchase, which Ms. Williams attributed to Mr. Williams's errors and Ms. Joplin attributed to the Williamses' failure to contact her for assistance or to use her, as buyer's agent, for the contract cancellation. (*See* Tr. at 192; Ex. S-10 at 1511-1517; Ex. R-1 at 4-8.) Another example of the Williamses' lack of sophistication is their failure to negotiate for the Purchase Agreement to be modified in any manner other than regarding the schedule of their investment payments, although the Purchase Agreement includes several provisions that should have given them pause (e.g., § 6(b), (c), and (f) and § 8(a)) and does not include provisions that the Williamses assert had been agreed upon during negotiations (*e.g.,* that their money would be refunded if Sync did not open within some period of time). (*See* Ex. S-4 at 2-3, 16; Tr. at 35, 57-58, 70, 280-281; Ex. S-3 at 1377-1378.) Mr. Olson's testimony that the Williamses requested multiple other changes to the Purchase Agreement, all of which were made, is not credible, as even he was only able to identify one change—the schedule for their investment payments—and that change had actually been suggested by him (as the Williamses' had suggested two payments rather than three).

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[68] Mr. Olson's testimony that the Williamses had the Purchase Agreement, in whole or in part, reviewed by an attorney is not credible, as the other evidence establishes that the Williamses relied upon Sync's attorney to explain and respond to their questions concerning the Purchase Agreement, which was substantially different from the draft agreement originally provided. (*See* Tr. at 35-36, 67-68; Ex. S-7 at 58-59; Ex. S-8.) Additionally, Mr. Olson's testimony that there were multiple revisions to the Purchase Agreement, beyond the schedule for payment of the investment amount, is not credible, as the documentary evidence does not support that assertion, the testimony of the other witnesses does not support that assertion, and Mr. Olson was unable to identify any changes other than the investment payment schedule. (*See* Tr. at 162; Ex. S-4 at 2-3, 16; *cf.* Tr. at 280-281.)

[69] It took the Williamses approximately 10 days to consult with their attorney concerning the draft agreement, which was received on January 14, 2019, and in response to which they sent an email to Respondents on approximately January 24, 2019, after having consulted with their attorney. (*See* Ex. S-10 at 1541, 1581, 1592.)

Contrary to Respondents' assertions, the evidence also does not establish that the relationship of the offerees to the issuers was such that the offerees had access to the sort of information about the issuer that registration would reveal. Under 15 U.S.C. § 77aa, an issuer must include 32 separate items of information within a registration statement, some of which would involve the compilation of a great deal of information. Among the items are "a statement of the capitalization of the issuer"; "the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds"; "the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions"; "the names and addresses of counsel who have passed on the legality of the issue"; "a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer [and a]ll the liabilities of the issuer"; "a copy of the opinion or opinions of counsel in respect to the legality of the issue"; and "a copy of its articles of partnership or association and all other papers pertaining to its organization." (15 U.S.C. §§ 77aa(9), (13), (14), (23), (25), (29), and (31)(c).) The Williamses may have been friendly with Ms. Joplin and Mr. Olson at the time of the investment, but their friendship did not provide them these types of information. Nor has it been established that some of these items of information even existed at the time of the investment (e.g., a copy of the opinion of counsel in respect to the legality of the issue, a detailed list of the specific purposes to which the investment funds were to be put and in approximately what amounts, and a balance sheet).

Additionally, when Ms. Williams asked to see Sync's bank records and everything that had been submitted to get Sync open, as well as to know what their investment funds had been used for to that point, Ms. Joplin did not respond, and Mr. Olson told Ms. Williams to "[g]o get yourself a lawyer" and subsequently that he had "already given answers to this to both you and Marcus." (Ex. R-1 at 12-19; Ex. S-10 at 1526-1531.) There is no evidence showing that either Ms. Joplin or Mr. Olson answered Ms. Williams's questions about expenditures or that Ms. Williams was ever provided the records she requested. (*See* Tr. at 44, 47; Ex. S-10 at 1530-1531.) Ms. Joplin's testimony that, during a phone call, she offered to let Ms. Williams come to the office and see Sync's records, including the Sync bank account records, and that Ms. Williams never came, is not credible in light of Ms. Joplin's lack of

response to Ms. Williams's requests by text, Mr. Olson's aggressive and non-substantive responses to Ms. Williams's requests by text, the lack of any documented indication that there was a phone call from Ms. Joplin to Ms. Williams during this time,[70] and Ms. Joplin's own description of her general reluctance to discuss topics other than real estate with the Williamses. (*See* Tr. at 217, 236; Ex. S-10 at 1526-1531.)

Respondents have not met their burden of proving the applicability of the registration exemption under A.R.S. § 44-1844(A)(1). The offer and sale of the investment contract to the Williamses did not involve a non-public offering.

E. Whether Respondents Proved the Registration Exemption at A.A.C. R14-4-126(E).

A.A.C. R14-4-126(E) adds to the exemptions under A.R.S. § 44-1844 "[o]ffers and sales of securities that satisfy the conditions in subsection (E)(2) by an issuer that is not an investment company," if they meet the following conditions and limitations:

- The offer and sale must satisfy the terms and conditions of A.A.C. R14-4-126(B)-(D);
- The aggregate offering price for an offering must not exceed $5 million (after specified reductions); and
- There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in any offering.

In addition, under A.A.C. R14-4-126(E)(3), an issuer is disqualified from the exemption if the issuer or specific categories of persons associated with the issuer has/have been convicted related to racketeering or securities transactions or are subject to specified adverse actions or conditions related to securities regulation. This exemption is referred to as the "limited offering exemption."

1. Division

The Division argues that Respondents did not meet their burden of proving strict compliance with the limited offering exemption under A.A.C. R14-4-126(E) because the Williamses are unaccredited investors, and the exemption requires that unaccredited investors be provided specific information, including an audited balance sheet. (Div. Br. at 19 (citing A.A.C. R14-4-

[70] With the volume of text communications between the Respondents and the Williamses, it is surprising that there is no reference in those text messages to any such phone call, particularly as Ms. Williams made the request for records and information more than once. (*See* Ex. S-10 at 1526-1531.)

126(C)(2)(b)(ii)).) Additionally, the Division asserts, to qualify for the limited offering exemption, Respondents would have been required to file a Form D notice within 15 days after the sale of securities to the Williamses, and Respondents have provided no proof that such a filing was made. (Div. Br. at 19 (citing A.A.C. R14-4-126(D)(1)(a)).)

2. Respondents

Respondents' brief does not argue that Respondents qualify for the limited offering exemption under A.A.C. R14-4-126(E). (*See* R. Br.) Nor did Respondents argue at hearing that they qualify for the limited offering exemption. (*See* Tr. at 16-20, 381-390.)

3. Resolution

Respondents have not argued that they qualify for the limited offering exemption under A.A.C. R14-4-126(E). Nonetheless, it would be appropriate to recognize their having met the burden for applicability of the exemption had they done so through the evidence. The evidence does not, however, establish that Respondents' offering and sale to the Williamses qualified for the limited offering exemption. The Williamses are not accredited investors, and A.A.C. R14-4-126(E) requires compliance with the terms and conditions of A.A.C. R14-4-126(B)-(D), which includes a requirement for an issuer to furnish a non-accredited investor specified information, including a financial statement, a reasonable time before the sale. (A.A.C. R14-4-1269C)(2)(b)(ii); Ex. S-10 at 1574; Tr. at 27-28.) This did not occur. Additionally, as noted by the Division, there is no evidence establishing that Respondents filed a Form D with the Commission within 15 days after the securities sale, as required by A.A.C. R14-4-126(D)(1)(a), or at all. (*See* Tr. at 101.)

F. Whether Respondents Violated A.R.S. §§ 44-1841 and 44-1842

Because Respondents, who were not registered as dealers or salesmen, offered and sold an unregistered security to the Williamses, and neither the non-public offering exemption nor the limited offering exemption applied to the offering and sale, Respondents violated A.R.S. §§ 44-1841 and 44-1842. The Securities Act provides for joint and several liability against any person who made, participated in, or induced the unlawful sale or purchase or a security, and it is clear that Respondents all participated in the transaction at issue. (*See* A.R.S. § 44-2003(A); *Grand v. Nacchio*, 225 Ariz. 171, 174 (2010) ("*Nacchio*").)

G. Whether Respondents Committed Securities Fraud in the Offer and Sale of Securities.

A.R.S. § 44-1991(A) provides:

> It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase of securities, including securities exempted under § 44-1843 or 44-1843.01 and including transactions exempted under § 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of the following:
>
> 1. Employ any device, scheme or artifice to defraud.
>
> 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
>
> 3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit.

1. Division

The Division argues that Respondents made untrue statements of material fact and omitted to state material facts to the Williamses in the offering and sale of the investment in Sync, in violation of A.R.S. § 44-1991(A)(2). (Div. Br. at 19.) According to the Division, because the statute imposes an affirmative duty not to mislead, the speaker does not need to know that a statement is false or that an omission is misleading in order for fraud to occur under A.R.S. § 44-1991(A)(2). (Div. Br. at 19-20 (citing *Aaron v. Fromkin*, 196 Ariz. 224, 227 (App. 2000) ("*Fromkin*")).) The Division asserts that the test for fraud is whether there is a "substantial likelihood, under all the circumstances, [that] the misstated or omitted fact would have assumed actual significance in the deliberations of a reasonable buyer." (Div. Br. at 20 (quoting *Trimble*, 152 Ariz. at 553).)

The Division argues that the following four misrepresentations constituted fraud in violation of A.R.S. § 44-1991(A)(2):

- Respondents misrepresented that Sync would be open within a month of the Williamses' initial investment, which was a material representation because it meant there would be a short turnaround time before the Williamses began to receive returns on their investment. (Div. Br. at 20.)
- Respondents misrepresented that if Sync did not open, the Williamses would receive a refund of their invested funds. (Div. Br. at 20 (citing Tr. at 39, 70).)

- Respondents misrepresented that the investment in Sync would be "fail-safe" and a "slam dunk." (Div. Br. at 20 (quoting Tr. at 70, 73).)
- Respondents misrepresented that the Williamses' invested funds would go toward a title company and would be used to obtain office space for Sync, obtain software, and hire a title agent who was set to work at Sync, which was a material misrepresentation because the Williamses would have been unlikely to invest if they had been told their invested funds would be used for the personal and business expenses of Ms. Joplin, Mr. Olson, and their other business ventures. (Div. Br. at 20-21 (citing Tr. at 38-39, 66).)

The Division asserts that Respondents had an affirmative duty not to mislead potential investors in any way and are strictly liable for any of the misrepresentations or omissions that they made. (Div. Br. at 21 (citing *Trimble*, 152 Ariz. at 553; *Dobras*, 128 Ariz. at 214).)

Further, the Division asserts, a primary violation of A.R.S. § 44-1991(A) can be direct or indirect, the courts look at the broad range of conduct and levels of participation to determine whether a person has violated the statute, and one person may be found liable under the statute for the fraudulent statements of another. (Div. Br. at 21 (citing *Barnes v. Vozack*, 113 Ariz. 269, 273 (1976); *Nacchio*, 225 Ariz. at 174).)

2. <u>Respondents</u>

Respondents assert that for fraud to be found under A.R.S. § 44-1991(A)(2), a plaintiff must show that a statement or omission would have assumed actual significance in the deliberations of a reasonable buyer. (R. Br. at 20 (citing *Fromkin*, 196 Ariz. at 224; *Dobras*, 128 Ariz. at 214).) Respondents argue that in asserting fraud, the Division has ignored "the elephant in the room"—the Purchase Agreement—which Respondents argue the Division has used to the extent that its provisions are favorable to the Division's case but has "completely disregarded" when it comes to "the endless plethora of critical protective provisions and representations that were duly negotiated within the contract . . . [and] reflect poorly on the Division's case." (R. Br. at 21.) Respondents argue that the law does not work this way. (R. Br. at 21.)

While Respondents do not argue that the "parol evidence rule" applies to Securities litigation to block all verbal evidence contradicting written evidence, and acknowledge that federal case law

provides otherwise, Respondents do argue as follows:

> [T]here is no authority whatsoever that dictates, states, or even infers [sic] that the representations and statements made by the offerees (in this case the Williams[es]) in a Purchase [Agreement] are to be casually disregarded, nor is there any authority that suggests that these representations do not carry great evidentiary weight, especially when the terms are clearly negotiated in a genuine exchange of negotiating positions amongst equal parties, as was clearly the case in the Sync negotiation.[71]

Respondents assert that it is "difficult to conceive" of a case involving a more collaborative contract than the Purchase Agreement. (R. Br. at 21.) To support this assertion, Respondents cite the "following facts [that] are beyond dispute:"

> (1) The parties met several times to hammer out the terms of what would become the Purchase [Agreement] prior to any draft of the contract even being created[.] [citing Tr. at 156-157, 363, 378-379]
>
> (2) The Williams[es] received multiple drafts of the contract, and were invited to review the same, and afforded the genuine opportunity to recommend and make changes to the Purchase [Agreement]. [citing Tr. at 281]
>
> (3) There is no "superior" party in this instance. The parties to the contracts were obviously friends. [citing Tr. at 364]
>
> (4) The Williams[es] had an opportunity to have independent counsel privately analyze and review the contract. [citing Tr. at 280; Ex. R-4 at 60-62]
>
> (5) The Williams[es] actually availed themselves of the opportunity to have an independent attorney review and discuss the proposed purchase contract with them. [citing Tr. at 280; Ex. R-4 at 60-62]
>
> (6) The Williams[es] actually recommended very substantial changes to the Purchase [Agreement], and these changes were actually made, without objection, by the respondents. [citing Tr. at 325-326]
>
> (7) Neither the Williams[es] nor their freely selected independent attorney inferred [sic], insisted, or requested that ANY of the four "promises" allegedly made by the respondents should be put into the Purchase [Agreement]. [citing Tr. at 286-290][72]

Respondents argue that no evidence rebutted the above "facts" and that plenty of evidence supported them, making it "indisputable that the . . . Sync Purchase [Agreement] was a duly and sincerely negotiated agreement, drafted 'from scratch',[sic] wherein each party could recommend or insist on changes, and changes were made as requested." (R. Br. at 22-23.) Additionally, Respondents assert

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[71] R. Br. at 21 (citing *Grainger v. State Sec. Life Ins. Co.*, 547 F.2d 303, 306-307 & n.11 (5th Cir. 1977); *Doelle v. Ireco Chems.*, 391 F.2d 6, 9 (10th Cir. 1968)).

[72] R. Br. at 22 (footnotes omitted). Rather than including the footnotes as in original, the brackets above show the sources cited by Respondents in those footnotes.

that the "parties had all the time they wanted (literally weeks) to carefully review the draft agreements and make changes prior to execution, and to seek independent counsel for the agreement." (R. Br. at 23.)

Respondents point out the provisions of the Purchase Agreement through which the Williamses, as Buyers, asserted the following: (1) that they understood that the interest in Sync was not registered under the Securities Act of 1933 or any state law and was being undertaken in reliance on an exemption; (2) that they had received and carefully reviewed all information needed to enable them to evaluate the investment and had been given the opportunity to ask questions of and to receive answers from Sync concerning its business and the interest and to obtain written information needed to verify the accuracy of the information; (3) that they understood Sync was a "startup," were aware that purchase of the interest was speculative and involved risk, were aware that there was no guarantee they would realize gain from the interest, and understood that they could lose their entire investment; and (4) that their knowledge and experience in financial and business matters made them capable of evaluating the merits and risks of acquiring the interest. (R. Br. at 23 (citing Ex. R-15).) Respondents also point out that the Purchase Agreement is not a lengthy "contract of adhesion with sinister disclaimers buried in small print" and argue that, instead, it is a "simple, direct, unambiguous directly negotiated Purchase [Agreement] with just *three* (3) substantive, easy to read pages." (R. Br. at 23-24 (boldface omitted).) According to Respondents, because of the sincerity and closeness of the negotiations, and the Williamses' "insist[ence] on other changes to the contract," the above-described statements in the Purchase Agreement "must be taken as the true and correct statements of the Williams[es] as of January 31, 2019." (R. Br. at 24.) Further, Respondents point out, the Purchase Agreement includes none of the "alleged promises" to the Williamses—no language about a refund, no guarantee of business performance, no start date (or even target date) for title operations, and no "hint or inferences [sic] that the money will be used strictly (or even partially) for Sync operations"—and instead includes language making it clear that Mr. Olson and Ms. Joplin were being paid for selling the interest in Sync. (R. Br. at 24.)

Because the Purchase Agreement contains none of the "alleged promises," Respondents say, it is the Williamses, rather than Mr. Olson and Ms. Joplin, who are not credible. (R. Br. at 24.)

Respondents state:

> The alleged promises simply do not make sense in light of the duly-negotiated, closely read Purchase [Agreement] that was signed supposedly immediately after these promises were allegedly made. The far, far more plausible explanation for these "promises" is that they were not uttered at all, but are conveneintly [sic] crafted and self-serving (and curiously timed) allegations specifically designed to try to evade the express representations that were so emphatically made in the Purchase [Agreement].[73]

Respondents argue that if the "promises" were made, they would have been included in the Purchase Agreement, and the language to the contrary would not have been included, because the Williamses had multiple opportunities to make changes and had no problem requesting other changes that they felt were important. (R. Br. at 25.) Respondents argue that "[e]lementary logic" requires one to conclude that the Purchase Agreement contains the language it does, and not the "promises," because the promises were never made. (R. Br. at 25.)

Respondents downplay the "slam dunk" remark as merely a "friendly 'welcome aboard' text" that the Williamses never understood to be a guarantee of performance, as evidenced by their signing of the Purchase Agreement, with its warnings about performance, days thereafter. (R. Br. at 25, 27, 29[74].) Further, Respondents argue, the Williamses surely would have invoked the guarantee for a refund when they demanded a refund, if any such guarantee had been made, but they did not do so, indicating that no guaranteed refund had been promised. (R. Br. at 26.) Finally, Respondents assert, the "alleged promise" concerning how the investment funds would be used is a "red herring" because Sync office space was secured, software for Sync was purchased, and the services of title agent Donna Hinkle were secured (although she was not paid because Sync was not yet operating as a title company). (R. Br. at 26 (citing Tr. at 319-320, 353; Ex. R-12; Ex. R-20).) Respondents point out that funds were also used to obtain the required bond, although both Mr. Olson and Ms. Joplin were "very adamant" that the investment funds were their personal property. (R. Br. at 26.)

Respondents emphasize the "stunning revelation" at the hearing that the $100,000 net worth requirement conveyed by AZDFI was actually erroneous, essentially arguing that the reason

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[73] R. Br. at 24-25.

[74] In their brief, Respondents state that the Purchase Agreement was signed "a few days" (R. Br. at 25), "a couple of days" (R. Br. at 29), and "20 days" (R. Br. at 27) after the "slam dunk" text. The "slam dunk" text was sent on January 11, 2019, 20 days before the Purchase Agreement was signed on January 31, 2019. (*See* Ex. S-10 at 1540; Ex. S-3 at 1376, 1380.)

Respondents and the Williamses fell out and that Sync is not currently operational is this "false requirement" from AZDFI. (R. Br. at 27-28.) Respondents state:

> This DIFI error is accordingly of critical, and even dispositive importance. The entire gist of the Division's case is based [on] individual events and allegations connected [to] Sync's failure to open. However, as argued above, Sync's failure to open was not due to any misleading statements, negligence, fraud or other malsfeasance [sic] on the part of [Ms.] Joplin and [Mr.] Olson. It is due to the DIFI issuing a false requirement that seemed insurmountable to all parties involved, from April 18, 2019 until the day the requirement was disavowed by Mr. Fromholz at the hearing.
>
> Therefore, in conclusion, the Division's case with respect to violations of A.R.S. §[]44-1991(A)(2) is terribly unpersuasive, offering nothing more than self-serving statements from investors that had the negotiating power, opportunity, means, legal support and motives to require that such promises be included in their Sync Purchase [Agreement]. Rather than requiring such provisions, they signed the Purchase [Agreement], which actually stated that they realized that the investment could fail. And finally, respondents once again point to the massive record to note how it is entirely bereft of any actual evidence of the alleged promises other than the self-serving statements of the Williams[es]. Considering how these parties essentially texted about everything with each other – whether happy or angry – it must strike the finder of fact very curious that none of these promises show up in the body of texts . . . .[75]

3. Resolution

The evidence shows the following:

- Respondents and the Williamses became fast friends,
- All were openly interested in and talked about real estate and money-making activities,
- Mr. Olson approached the Williamses specifically about investing in Sync,
- They all got together on a couple of occasions to discuss Sync,
- Mr. Olson gave the Williamses an example (with dollar figures) of how the Williamses would make money if they invested in Sync,
- Mr. Olson believed and conveyed to the Williamses that Sync would be opened within a short time frame,[76]
- Respondents represented the Williamses' potential investment as startup money for Sync to become operational more quickly,

[75] R. Br. at 28-29.

[76] *See* Ex. R-7 (showing Mr. Olson's earlier overly optimistic timeline); Ex. S-10 at 1546.

- Mr. Olson described the Sync investment and business model as a "slam dunk" and fail-safe,
- Mr. Olson provided a first draft of an agreement for the Williamses to invest in Sync,
- The Williamses consulted their own attorney about the first draft,
- The Williamses' attorney advised them against signing the first draft unless it was almost completely rewritten,
- The Williamses somehow conveyed this information to Respondents via email,
- Respondents then had Mr. Escolar rewrite the first draft agreement,
- The completely rewritten agreement was provided to the Williamses,
- The Williamses did not have their attorney review the completely rewritten agreement that became the Purchase Agreement,
- The Williamses asked for the completely rewritten agreement to be modified to require installment payments rather than one payment,
- The completely rewritten agreement was so modified (becoming the Purchase Agreement),
- The Purchase Agreement was executed on the last evening of January 2019, and
- The Williamses' investment was wired to the Sync bank account on the first day of February 2019.

A.R.S. § 44-1991(A)(2) imposes an affirmative duty not to mislead, and a statement or omission is considered misleading if there is a substantial likelihood, under all the circumstances, that the misstated or omitted fact would have actual significance in the deliberations of a reasonable buyer. (*Fromkin*, 196 Ariz. at 227; *Trimble*, 152 Ariz. at 553.) The evidence establishes that in offering to sell and selling the interest in Sync to the Williamses, Respondents:

- Misrepresented to the Williamses that the investment in Sync would be a "slam dunk" and was "basically fail-safe";
- Misrepresented to the Williamses that Sync would be open for business within the month or in a month; and
- Failed to explain to the Williamses that a portion of the investment money wired to Sync's bank account would be used by Mr. Olson and Ms. Joplin for their personal expenses and for their other business operations, rather than for Sync's startup and capitalization, which was

misleading.

We are not persuaded by Respondents' argument that the Investment Representations of Buyers portion of the Purchase Agreement proves that no such misrepresentations or misleading omissions could have occurred. The Williamses never had the Purchase Agreement reviewed by their attorney, relied on Mr. Escolar to answer their questions about the Purchase Agreement (which may or may not have included any questions about the Investment Representations of Buyers), and are not sophisticated investors. Based on their own testimony concerning the deal that they made through the Purchase Agreement, as compared to the Purchase Agreement itself, one can question whether the Williamses even read those portions of the Purchase Agreement that did not concern the percentage of interest they were obtaining and the manner in which they were to pay for it.[77] Whether they did or they did not, however, it is apparent that the misrepresentations and omissions of Respondents would have had actual significance in the deliberations of a reasonable buyer. A reasonable buyer would want to know how much money he or she could expect to make from an investment, how safe the investment was, how quickly money would start to be made, and for what his or her investment funds would be used. All of these would have actual significance to a reasonable buyer when deciding whether or not to invest.

We do not find that the Williamses were told by Respondents that they would receive a refund of their investment if Sync did not open at all or did not open by a particular time. The only evidence to this effect is the testimony of the Williamses, which is directly contrary to the testimony of Mr. Olson and Ms. Joplin. Unlike with the other statements or omissions, there is no separate evidence to support or refute the Williamses' assertions.[78] We are not persuaded that the mere fact that the Williamses asked for a refund of their investment means that they had been told they would be entitled to a refund under certain circumstances. Just as Respondents did not respond to the messages demanding a refund by stating that no refund had been promised, the Williamses did not assert in their

[77] This is in contrast to Mr. Olson's apparently comprehensive understanding of the contents of the Purchase Agreement, particularly Mr. Olson's apparent understanding of the meaning of Purchase Agreement § 8(a)—to the effect that any written or oral representations made before the signing of the Purchase Agreement would be superseded by the Purchase Agreement. (*See* Tr. at 289.)

[78] The "slam dunk" and "fail safe" statements were supported by Mr. Olson's "slam dunk" text message. The statement about Sync being open within the month or in a month was supported by Mr. Olson's text messages and his letter to Donna Hinkle. The failure to explain the use of the investment funds was supported both by Mr. Olson's offer text that spoke to taking on a partner or doing something to assist with growing faster and by the Purchase Agreement requiring the investment funds to be wired to the Sync bank account.

messages demanding a refund that a refund had been promised under certain circumstances. The Division has not established by a preponderance of the evidence that Respondents made a misrepresentation regarding a refund.

The misrepresentations and omissions described above constituted fraud committed by Respondents in violation of A.R.S. § 44-1991(A)(2). As stated above, the Securities Act provides for joint and several liability against any person who made, participated in, or induced the unlawful sale or purchase of a security, and it is clear that Respondents all participated in the transaction at issue. (*See* A.R.S. § 44-2003(A); *Nacchio*, 225 Ariz. at 174.)

H. Whether Control Person Liability Exists Pursuant to A.R.S. § 44-1999.

A.R.S. § 44-1999(B) provides:

> Every person who, directly or indirectly, controls any person liable for a violation of § 44-1991 or 44-1992 is liable jointly and severally with and to the same extent as the controlled person to any person to whom the controlled person is liable unless the controlling person acted in good faith and did not directly or indirectly induce the act underlying the action.

1. Division

The Division argues that because Ms. Joplin and Mr. Olson directly or indirectly controlled Sync within the meaning of A.R.S. § 44-1999, each of them is jointly and severally liable to the same extent as Sync for Sync's violations of A.R.S. § 44-1991. (Div. Br. at 21.) The Division asserts that under the Securities Act, liability for persons who have the power to control the activities of persons or entities liable as primary violators of A.R.S. § 44-1991 is presumed, with "control" including actual control or legally enforceable control and A.R.S. § 44-1999 to be liberally construed to achieve its remedial purpose of protecting the public interest. (Div. Br. at 21 (citing *Eastern Vanguard Forex Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 410, 412 (App. 2003)).) According to the Division, Ms. Joplin and Mr. Olson are clearly control persons because each is a managing member of Sync pursuant to its Articles of Organization, each controlled the Sync bank account and used this control to divert the Williamses' investment funds for personal use and for their other businesses, and Mr. Olson testified that he and Ms. Joplin were the managing members. (Div. Br. at 22 (citing Tr. at 107, 260).)

2. Respondents

Respondents did not specifically address the issue of control person liability in their brief.

3. Resolution

Ms. Joplin and Mr. Olson are and were at all times relevant to this matter the only managing members of Sync and the only persons with authority to act as and for Sync, as evidenced by the Articles of Organization and Articles of Amendment for Sync; the fact that only Ms. Joplin and Mr. Olson were signatories to the Sync bank account; and the Operating Agreement signed by the parties on January 31, 2019, designating Ms. Joplin and Mr. Olson as the Managers of Sync and enumerating their powers.

Ms. Joplin and Mr. Olson are controlling persons and liable jointly and severally with and to the same extent as Sync for Sync's violations of A.R.S. § 44-1991(A)(2).

I. Whether Community Property Liability Exists Pursuant to A.R.S. § 44-2031(C).

A.R.S. § 44-2031(C) provides that the Commission may join the spouse in any action authorized by A.R.S. Title 44, Chapter 12, to determine the liability of the marital community, unless the spouse is divorced from the respondent at the time the Commission files its action.

1. Division

The Division joined Mr. Joplin, the spouse of Ms. Joplin, in this action to determine the liability of the marital community under A.R.S. § 44-2031. (Div. Br. at 22.) The Division asserts that a debt is presumed to have a community nature and that the party contesting that nature bears the burden of overcoming the presumption by clear and convincing evidence. (Div. Br. at 22 (citing *Hrudka v. Hrudka*, 186 Ariz. 84, 91 (App. 1995) ("*Hrudka*")[79].) Further, the Division asserts, the marital community may be bound regardless of the spouse's knowledge or participation in acquiring a debt. (Div. Br. at 22 (citing *Ellsworth v. Ellsworth*, 5 Ariz. App. 89, 92 (App. 1967)).)

Because Mr. Joplin was married to Ms. Joplin at all relevant times, the Division asserts, the marital community is liable for all of Ms. Joplin's violations of the act, and any order of restitution or administrative penalties for those violations are a community obligation for which each is jointly and severally liable. (Div. Br. at 22-23.)

[79] In *Meister v. Meister*, 503 P.3d 842, 850 (Ariz. App. 2021), the Arizona Court of Appeals indicated that *Hrudka* has been superseded in part by statute, albeit without citing the statute or explaining what portion of the opinion has been superseded. The cases cited in *Hrudka* for the principle set forth by the Division herein have not been superseded. (*See Hrudka*, 186 Ariz. at 91-92 (citing *Donato v. Fishburn*, 90 Ariz. 210, 213 (1961); *Lorenz-Auxier Financial Group, Inc. v. Bidewell*, 160 Ariz. 218, 220 (App. 1989)).)

2. **Respondents**

Respondents did not specifically address the liability of the marital community in their brief.

3. **Resolution**

Because Mr. Joplin was married to Ms. Joplin at all times relevant to this matter, and no effort has been made to overcome the presumption of liability for the Joplin's marital community, the Joplins' marital community is liable for any debts created in this matter through an order of restitution and/or administrative penalties.

J. Whether the Commission Should Grant Relief for Violations of the Act.

A.R.S. § 44-2032 authorizes the Commission, if it appears that any person has engaged in a violation of A.R.S. Title 44, Chapter 12, or any rule or order of the Commission thereunder, to issue an order directing the person to cease and desist from engaging in the act or doing any act in furtherance of the act and to take appropriate affirmative action within a reasonable period of time, as prescribed by the Commission, to correct the conditions resulting from the act, including by ordering restitution as prescribed by Commission rules.

A.R.S. § 44-2036(A) authorizes the Commission, after hearing, to assess an administrative penalty in an amount not to exceed $5,000 for each violation of any provision of A.R.S. Title 44, Chapter 12.

1. **Division**

The Division requests that the Commission grant the following relief:[80]

- Order Respondents permanently to cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
- Order Respondents, jointly and severally, to pay restitution to the Williamses in the amount of $50,000 plus pre-order interest from the date of investment; and
- Order Respondents to pay administrative penalties of not more than $5,000 for each violation of the Securities Act, as the Commission deems just and proper, pursuant to A.R.S. § 44-2036(A), with the Division recommending an administrative penalty of $5,000 for Sync; of

[80] Div. Br. at 23.

$5,000 for Ms. Joplin, as her sole and separate obligation, and Ms. and Mr. Joplin, as a community obligation; and of $5,000 for Mr. Olson.

2. Respondents

Rather than addressing the Division's specific prayers for relief, Respondents argue that the Division's position must be rejected and the case dismissed because:

- The Division failed to prove that any Respondent violated A.R.S. §§ 44-1841 and 44-1842, as there was an exemption to registration;
- The Division failed to prove the occurrence of any actionable violation of A.R.S. § 44-1991(A); and
- Respondents proved by a preponderance of the evidence that the Sync offering to the Williamses was a non-public offering entitled to exemption under A.R.S. § 44-1841(A)(1).

3. Resolution

As set forth above, we have made the following determinations herein:

- The 19.9% interest in Sync sold by Respondents and purchased by the Williamses meets the *Howey* test for an investment contract and thus was a security under the Securities Act;
- Respondents offered and sold the Williamses the investment contract, which was a security, in return for $50,000 that was paid at the time of the sale and two additional payments of $25,000 to be paid at later times;
- None of the Respondents was registered as a salesman or dealer as required by A.R.S. § 44-1842;
- The investment contract was not registered as a security in Arizona as required by A.R.S. § 44-1841;
- Respondents did not meet their burden of proving the applicability of the registration exemption under A.R.S. § 44-1844(A)(1), and the offer and sale of the investment contract to the Williamses did not involve a non-public offering;
- Respondents did not meet their burden of proving the applicability of the registration exemption under A.A.C. R14-4-126(E), and the offer and sale of the investment contract to the Williamses did not involve a limited offering under the rule;

- Respondents committed fraud in violation of A.R.S. § 44-1991(A)(2) in offering to sell and selling the investment contract to the Williamses by:
    - Misrepresenting to the Williamses that the investment in Sync would be a "slam dunk" and was "basically fail-safe";
    - Misrepresenting to the Williamses that Sync would be open for business within the month or in a month; and
    - Failing to explain to the Williamses that a portion of the investment money wired to Sync's bank account would be used by Mr. Olson and Ms. Joplin for their personal expenses and for their other business operations, rather than for Sync's startup and capitalization, which was misleading;
- Ms. Joplin and Mr. Olson are controlling persons and liable jointly and severally with and to the same extent as Sync for Sync's violations of A.R.S. § 44-1991(A)(2); and
- The Joplins' marital community is liable for any debts created in this matter through an order of restitution and/or administrative penalties.

In light of Respondents' violations of the Arizona Securities Act, it is appropriate for the Commission, under A.R.S. § 44-2032, to order Respondents permanently to cease and desist from engaging in any act, practice, or transaction that constitutes a violation of A.R.S. Title 44, Chapter 12, or any rule or order of the Commission promulgated under A.R.S. Title 44, Chapter 12.

Additionally, under A.R.S. § 44-2032 and A.A.C. R14-4-308(C), it is appropriate for the Commission to order Respondents, jointly and severally, to pay restitution to the Williamses in the amount of $50,000 plus pre-order interest from the date of investment.

The Division did not set forth its rationale for the $5,000 administrative penalties recommended to be assessed against Ms. Joplin, Mr. Olson, and Sync. The record establishes that Respondents each committed one violation of A.R.S. §§ 44-1841 and 44-1842 and that Respondents each committed at least one violation of A.R.S. § 44-1991(A)(2). Consequently, each Respondent (and Ms. Joplin's marital community) could be assessed a penalty higher than $5,000. Because the language of the Purchase Agreement strongly suggests that the registration violations may have been committed based on erroneous legal advice, and because this action, the cease and desist order herein, and the restitution

ordered herein should serve as a strong deterrent to future violations, we conclude that it is appropriate to adopt the Division's $5,000 administrative penalty as to each of the Respondents.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. The procedural history for this matter set forth in Section (I) of the Discussion portion of this Decision is accurate, and we adopt it in its entirety as though set forth fully here.

2. All events in relation to this matter occurred within Arizona.[81]

3. Respondent Ms. Joplin was a resident of Arizona and married to Mr. Joplin at all times material to this matter.[82]

4. Respondent Spouse Mr. Joplin has not been involved with Sync's day-to-day activities or paperwork.[83]

5. Respondent Mr. Olson was a resident of Arizona and unmarried at all times material to this matter.[84]

6. Ms. Joplin holds a real estate broker license and a mortgage broker license, owns her own real estate brokerage firm (Joplin Realty), and is a half-owner and managing member of a mortgage brokerage firm (Lime).[85]

7. Mr. Olson holds a real estate broker license and a mortgage broker license, is part owner of a real estate brokerage firm (Top Realty), and is a half-owner and managing member of a mortgage brokerage firm (Lime).[86]

8. During the period of January 1, 2018, to March 8, 2021, neither Ms. Joplin nor Mr. Olson was registered with the Commission as a securities salesman or dealer under Article 9 of the Securities Act, neither made a notice filing, and neither was licensed with the Commission as an

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[81] *See, e.g.,* Ex. R-14; Ex. R-15; Ex. S-9; Tr. at 26-33.
[82] Tr. at 92, 126-127.
[83] Tr. at 126-127.
[84] Tr. at 256; Ex. S-21 at 1.
[85] Tr. at 93, 126-127, 130, 135-136, 259; Ex. S-15; Ex. S-12b.
[86] Tr. at 93, 135-136, 256-259; Ex. S-12b; Ex. S-13.

investment adviser or investment adviser representative under Article 4 of the Arizona Investment Management Act.[87]

9. Respondent Sync was formed by Ms. Joplin and Mr. Olson as a member-managed LLC in Arizona on May 8, 2018.[88]

10. During the period of January 1, 2018, to March 8, 2021, Sync did not file with the Commission a notice under A.R.S. § 44-1850 of the Securities Act or Article 12 of the Arizona Investment Management Act; did not register securities with the Commission by description under Article 6 of the Securities Act or by qualification under Article 7 of the Securities Act; was not registered as a dealer under Article 9 of the Securities Act; and did not make a notice filing and was not licensed with the Commission as an investment adviser under Article 4 of the Arizona Investment Management Act.[89] Additionally, neither Sync nor any member interests in Sync were registered with the Commission during this period.[90]

11. The Williamses are a married couple who resided in Arizona at all times material to this matter.[91] Ms. Williams is a homemaker who completed three semesters of college at Arizona State University, and Mr. Williams works as an auto technician.[92] The Williamses have engaged in fixing and flipping homes, averaging one or two homes per year, and as of the hearing in this matter had bought and resold a total of seven properties.[93] The Williamses are not accredited investors and were not accredited investors at any time relevant to this matter.[94]

12. The Williamses first met Ms. Joplin in early September 2018 when they engaged her to be buyers' agent for purchase of a new-build home from KB Homes and subsequently had Ms. Joplin act as buyers' agent for purposes of seeing, making offers on, and attempting to purchase homes to flip.[95] The Williamses first met Mr. Olson at approximately the same time because he was frequently

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[87] Ex. S-1b; Ex. S-1c; Tr. at 91.
[88] Ex. S-2a; Ex. S-2b; Tr. at 321-322.
[89] Ex. S-1a.
[90] Tr. at 91.
[91] Tr. at 23, 62.
[92] Tr. at 54, 62.
[93] Tr. at 26, 28, 54-55.
[94] Tr. at 27-28, 359-360.
[95] Tr. at 24-26, 28, 63, 139-140, 142-143; Ex. R-6 at 78-79; Ex. R-16.

with Ms. Joplin when she met up with the Williamses.[96]

13. The Williamses quickly became friendly and began socializing with Ms. Joplin and Mr. Olson, getting together both with and without a business purpose.[97] The Williamses, Ms. Joplin, and Mr. Olson frequently communicated amongst each other via text messaging during the times relevant to this matter.[98]

14. On December 10, 2018, Mr. Olson sent Ms. Williams a text on behalf of himself and Ms. Joplin asking whether the Williamses were interested in investing in Sync and offering to outline something and talk if they were.[99] Mr. Olson followed up this message with another message to Ms. Williams on December 19, 2018, asking whether the Williamses had thought about Respondents' offer because he and Ms. Joplin were "considering taking on a partner or doing something to assist with growing faster."[100] Mr. Olson also stated that the Williamses would "be surprised at the numbers from the business."[101]

15. The Williamses met with Ms. Joplin and Mr. Olson twice in person to discuss the Williamses' investing in Sync, once on December 26, 2018, and once on January 6, 2019, both times in Arizona.[102] Through the two meetings, Mr. Olson and Ms. Joplin described Mr. Olson's "linear integration model"—how business would be obtained from transactions generated by Joplin Realty, Top Realty, Lime, and external referrals, and Sync would make money from both escrow and title insurance services; how the Williamses would get paid; and how much business Sync was expected to do.[103] Mr. Olson provided an example that would allow the Williamses to make approximately $5,000 to $6,000 per month as a return on their investment.[104] Mr. Olson told the Williamses that Sync should be up and running by the end of February 2019 or within a month after closing on the investment deal.[105]

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[96] Tr. at 24-25, 63, 265.
[97] Tr. at 64, 140-141, 146-147, 266-267; see Ex. S-10 at 1513; Ex. R-2 at 22-23.
[98] See Ex. S-4; Ex. S-6; Ex. S-7; Ex. S-10; Ex. R-1; Ex. R-2; Ex. R-3; Ex. R-4; Ex. R-5; Ex. R-6.
[99] Tr. at 26-27; Ex. S-10 at 1574.
[100] Ex. S-10 at 1577.
[101] *Id.*
[102] Tr. at 28-30, 32-33, 156-157, 273-276; Ex. R-2 at 22, 27; Ex. S-7 at 55.
[103] Tr. at 29-33, 64-65, 75, 156-157, 213-214, 274-278; Ex. S-7 at 55; Ex. R-2 at 26-27.
[104] Tr. at 31, 64-65, 75.
[105] Tr. at 32, 65-66.

16. When communicating with the Williamses, Mr. Olson characterized the investment in Sync as "basically fail-safe" and a "slam dunk."[106]

17. By January 14, 2019, the Williamses had received a draft investment agreement from Respondents.[107]

18. The Williamses had their own lawyer review the draft agreement on January 18, 2019.[108] The Williamses' lawyer advised the Williamses that the draft agreement had numerous issues and that he would not be comfortable with their signing it unless it was almost entirely rewritten.[109] The Williamses shared this information with Respondents no later than January 24, 2019.[110]

19. Respondents had the draft agreement completely rewritten by Mr. Escolar, who was Sync's attorney in this matter, and Mr. Olson emailed the Williamses the Purchase Agreement and the Operating Agreement on January 26, 2019.[111] Mr. Olson stated that Respondents would like to do the closing the next week and offered to have Mr. Escolar answer any questions or concerns the Williamses might have with either document.[112]

20. On January 29, 2019, Mr. Olson messaged the Williamses to "touchbase" and ask if they could schedule a conference call with Mr. Escolar to address any questions or concerns the Williamses had so that they could do the closing before the end of the month.[113]

21. On January 29, 2019, Ms. Williams responded and agreed to the suggested conference call, subsequently working out with Mr. Olson that the conference call would take place the next day.[114]

22. On January 30, 2019, the Williamses, Mr. Olson, Ms. Joplin, and Mr. Escolar had a conference call during which the whole investment transaction was discussed, and the Williamses' questions were answered by Mr. Escolar and Respondents.[115]

23. On January 31, 2019, Mr. Olson texted Mr. Williams to find out if Mr. Williams had

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[106] Tr. at 70, 72-73, 342-343; Ex. R-2 at 27; Ex. S-10 at 1539-1540.
[107] *See* Ex. S-10 at 1541, 1581.
[108] Ex. S-7 at 55; Ex. S-10 at 1592-1593, 1601.
[109] Tr. at 35.
[110] *See* Ex. S-10 at 1541.
[111] Ex. S-10 at 1541; Ex. S-5; *see* Ex. S-8.
[112] Ex. S-5.
[113] Ex. S-10 at 1602-1603; Ex. S-7 at 56.
[114] Ex. S-10 at 1542-1544, 1603, 1606; Ex. S-7 at 56.
[115] Tr. at 36; *see* Ex. S-10 at 1565, 1609-1610; Ex. S-7 at 58-59.

thought any more about the structure of the investment, stating that Respondents were amenable to a "graduated structure."[116] Mr. Olson stated that he could have the documents finished that afternoon and the closing scheduled for the next day.[117] Mr. Williams then proposed that the Williamses' investment be provided $50,000 at closing and another $50,000 six months later.[118] Mr. Olson responded by proposing $50,000 at closing, $25,000 three months after closing, and another $25,000 six months after closing.[119] The Williamses agreed to this, and Mr. Olson stated that he would have Mr. Escolar change the documents accordingly.[120] The Williamses did not request any other changes to either the Purchase Agreement or the Operating Agreement.[121]

24. The Williamses did not have either the Purchase Agreement or the Operating Agreement reviewed by their attorney and relied upon Mr. Escolar and Respondents to provide clarification concerning the documents and to answer their questions about the documents.[122]

25. The Purchase Agreement provided, *inter alia*, that the Williamses as Buyers were purchasing from Mr. Olson and Ms. Joplin as Sellers a total interest of 19.9% in Sync ("the Interest") and that Buyers were to pay Sellers $100,000 for the Interest, with $50,000 to be wired to Sync at or before closing; $25,000 due May 1, 2019; and $25,000 due August 1, 2019.[123] The Purchase Agreement included the "INVESTMENT REPRESENTATIONS OF BUYERS" set forth in Section (II)(D)(1) of the Discussion portion of this Decision.[124] The Purchase Agreement did not describe how the Williamses' investment funds were to be used, did not provide a date by which Sync would be open for business, did not include a guaranteed revenue amount for the Williamses, and did not state that the Williamses would be provided a refund if Sync did not open by a particular date.[125]

26. The Operating Agreement provided, *inter alia*, that Mr. Olson and Ms. Joplin, the Managers of Sync, are vested with control, management, direction, and operation of Sync; have the

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[116] Ex. S-4 at 6.
[117] Ex. S-4 at 6, 2
[118] Ex. S-4 at 2.
[119] Ex. S-4 at 2.
[120] Ex. S-4 at 2-3, 16.
[121] Tr. at 162; *cf.* Tr. at 280-281.
[122] *See* Tr. at 35-36, 67-68; Ex. S-7 at 58-59; Ex. S-8.
[123] Ex. S-3 at 1376-1381 (p. 1, §§ A, B, 2).
[124] *See* Ex. S-3 at 1377-1378 (§ 6).
[125] *See* Ex. S-3 at 1376-1378.

power to bind Sync; and are authorized to make all decisions as to management and disposition of Sync assets.[126] The Operating Agreement required a Manager, upon request, to supply any member information regarding Sync or its activities and authorizes any member to have access to and inspect and copy all books, records, and materials in the Managers' possession regarding Sync or its activities.[127] The Operating Agreement included the provisions set forth in Section (II)(D)(2) of the Discussion portion of this Decision.[128]

27. The Purchase Agreement and Operating Agreement were executed by the Williamses, Mr. Olson, and Ms. Joplin on January 31, 2019.[129]

28. Ms. Williams had $50,000 transferred from her account at Wells Fargo to Sync's account at Wells Fargo on February 1, 2019.[130] The Williamses did not provide any additional investment funds to Respondents.[131]

29. On February 6, 2019, Mr. Williams texted Mr. Olson, "Have an ETA yet?" and Mr. Olson responded, *inter alia*, "Should be this month."[132]

30. On February 22, 2019, Mr. Williams asked Mr. Olson, "Any updates?" and Mr. Olson responded, *inter alia*, "We got approved on the surety bond, clearance cards and submitted applications for escrow agent license, title agent license, and going back and forth with a few of the underwriters."[133] Mr. Olson's statements concerning Respondents' having submitted applications for the escrow agent license and title agent license were not true, as no application of either type had been filed at that time.[134]

31. The application for an escrow agent license was filed on February 26, 2019.[135] On the application, Respondents listed only Mr. Olson and Ms. Joplin as members of Sync, with each said to

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[126] Ex. S-3 at 1384 (§§ 4.1, 4.2, 4.3).
[127] Ex. S-3 at 1384 (§ 4.8).
[128] See Ex. S-3 at 1382-1388, 1391-1392 (§§ 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 4.3, 4.7, 4.8, 4.9, 4.11, 5.1, 5.2, 6.1, 6.2, 6.3, 8.1, ex. 1, ex. 2).
[129] Ex. S-3 at 1380-1381, 1389-1391.
[130] Ex. S-9.
[131] *See* Ex. R-1 at 15.
[132] Ex. S-10 at 1545-1546; Ex. R-2 at 31-32.
[133] Ex. S-10 at 1547; Ex. R-2 at 32-33.
[134] *See* Tr. at 193, 353; Ex. S-11 at 1754; Ex. R-11 at 187.
[135] Tr. at 193; Ex. S-11 at 1754; Ex. R-11 at 187.

own 50.0%.[136] Ms. Joplin certified that the information on the application was true, although she knew that the Purchase Agreement and Operating Agreement had been executed several weeks earlier.[137]

32. No application for a title agent license was filed prior to the hearing in this matter.[138]

33. On March 29 and April 9, 2019, Mr. Williams again texted Mr. Olson asking when Sync would be open for business.[139] Mr. Olson responded with information attributing delays to AZDFI.[140]

34. In approximately April 2019, the Williamses pulled out of their agreement to purchase the KB Homes new-build home, losing their $2,500 earnest money in the process, although they made efforts to have it returned.[141] The Williamses canceled the contract because Mr. Williams had lost his job.[142] Although Ms. Joplin was buyers' agent for the purchase, the Williamses did not contact Ms. Joplin to have the contract canceled.[143] Ms. Williams texted Ms. Joplin on April 26, 2019, that Mr. Williams had "messed up" when dealing with KB Homes while Ms. Williams was sick and had "screwed" their financing for the home by purchasing a new vehicle.[144]

35. On April 18, 2019, AZDFI emailed Mr. Olson and provided him a list of five "deficiencies" that made Sync's escrow agent license application incomplete.[145] Deficient Item 3 stated: "Provide the Company's Audited Financial Statement, ensure the net worth is $100k or more."[146] AZDFI again emailed Mr. Olson about the deficiencies on April 19 and 20, 2019.[147] On April 21, 2019, after not getting a response from Mr. Olson in spite of attempts by phone and email, AZDFI changed Sync's escrow agent license application status to "withdrawn."[148]

36. In early May 2019, when Mr. Williams texted Mr. Olson to ask when Sync would be open for business and for an update, stating that Mr. Olson had told him that it would be up and running

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[136] Ex. S-3 at 1401.
[137] *See* Ex. S-3 at 1380-1381, 1389-1391, 1403, 1405.
[138] Tr. at 353.
[139] Ex. S-10 at 1549-1552; Ex. R-2 at 34-36.
[140] *Id.*
[141] *See* Tr. at 139-140, 191-192; Ex. S-10 at 1511-1517; Ex. R-1 at 4-8; Ex. R-6 at 80.
[142] Ex. S-10 at 1513, 1516.
[143] *See* Ex. S-10 at 1513-1516; Ex. R-1 at 6-8.
[144] Ex. S-10 at 1515-1516.
[145] Ex. R-8 at 172; Ex. S-11 at 1750-1751; Tr. at 194-195.
[146] Ex. R-8 at 172; Ex. S-11 at 1750-1751; Tr. at 194-195. At hearing, Mr. Fromholtz revealed that there was not actually a $100,000 net worth requirement and that the $100,000 language had been included as a glitch in AZDFI's system.
[147] Ex. S-11 at 1749-1750.
[148] Ex. S-11 at 1752; Tr. at 71, 84.

by the end of March, Mr. Olson attributed the delay to AZDFI and the financial audit requirement.[149] Mr. Olson did not deny that he had stated that Sync would be open by the end of March.[150] Respondents did not reveal to the Williamses that the escrow agent license application had been deemed withdrawn.[151] Mr. Williams learned that the application had been withdrawn when he contacted AZDFI himself to inquire about its status.[152]

37. By late May-early June 2019, the relationship and communications between Respondents and the Williamses had begun to break down, with the Williamses seeking information about Sync's opening date and the audit and Mr. Olson not picking up calls and not providing direct responses.[153] On the evening of June 6, 2019, Mr. Olson texted Mr. Williams that he did not have a direct answer for how they could proceed with Sync, and Mr. Williams responded that the Williamses would need their money back if Sync could not proceed as it was supposed to.[154] The Williamses did not refer to any language in the Purchase Agreement or Operating Agreement or to any particular statement made by Respondents that authorized a refund.[155]

38. On June 7, 2019, the Williamses began to demand a refund of their money, and communications turned acrimonious.[156] The Williamses repeated their demand for a refund over the next couple of days.[157] On June 10, 2019, Mr. Olson stated that Respondents would not be releasing any funds back to the Williamses and told them to get a lawyer if they wanted to "go down [that] road."[158]

39. The Williamses have not received any funds from Respondents since making their $50,000 investment.[159]

40. On June 10, 2019, Ms. Williams asked Respondents what their investment funds had

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[149] Ex. S-10 at 1552-1555; Ex. R-2 at 37-39.
[150] *See* Ex. S-10 at 1552-1554; Ex. R-2 at 37-38.
[151] Tr. at 235, 366-368. Mr. Olson testified that AZDFI did not notify Respondents that the application had been withdrawn. (Tr. at 371-372.)
[152] Tr. at 71.
[153] *See* Ex. S-10 at 1518, 1555; Ex. R-1 at 9, 11; Ex. R-2 at 39-41; Ex. S-4 at 4-5, 7-8, 10, 41-47; Ex. S-6 at 51.
[154] Ex. S-4 at 7.
[155] *See* Ex. S-4 at 7.
[156] *See* Ex. S-4 at 8, 45-47; Ex. S-6 at 52; Ex. R-1 at 12-19.
[157] *See* Ex. R-1 at 12; Ex. S-10 at 1522.
[158] Ex. R-1 at 18.
[159] *See* Tr. at 41, 117; Ex. R-11.

been used for thus far and asked to see everything that had been submitted to get Sync open as well as the Sync bank account statements going back to January 2019.[160] Ms. Williams was not provided answers to her questions or access to the information requested.[161]

41. Between February 1, 2019, and May 7, 2020, Respondents spent approximately $20,322.41 to pay for Sync's operating expenses.[162] The remainder of the $50,000 investment funds wired by the Williamses were used for Respondents' other businesses and for Mr. Olson and Ms. Joplin's personal expenses.[163]

42. The Williamses were never informed by Respondents that their investment funds would be used for any purpose other than Sync's operating expenses and capitalization and did not indicate to Respondents that it was acceptable for their investment funds to be used for purposes other than Sync.[164]

43. These findings of fact are based upon the Discussion above, and the findings made therein are also incorporated herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings and conclusions of law contained in the Discussion above are incorporated herein.

3. Within Arizona, Respondents offered and sold to the Williamses an investment contract, which is a security within the meaning of A.R.S. § 44-1801.

4. Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to establish that the security offered and sold was exempt from registration under the Act.

5. Respondents violated A.R.S. § 44-1841 by offering and selling a security that was neither registered nor exempt from registration.

6. Respondents violated A.R.S. § 44-1842 by offering and selling a security while not

[160] Ex. R-1 at 14-18; Ex. S-10 at 1524-1525, 1529; Tr. at 43-44, 47.
[161] Tr. at 47, 345; Ex. R-1 at 17; *see* Ex. S-10 at 1530-1531.
[162] *See* Ex. R-10; Ex. R-11; Ex. R-12; Ex. R-13.
[163] *See* Tr. at 113-119, 175, 217, 242-243, 246-249, 251, 317-318; Ex. S-24; Ex. S-25.
[164] See Tr. at 38-39, 52-53, 72, 178, 217, 354.

being registered as dealers or salesmen.

7. Respondents committed fraud in the offer and sale of securities, in violation of A.R.S. § 44-1991, in the manner set forth hereinabove.

8. Respondents Ms. Joplin and Mr. Olson directly or indirectly controlled Sync, within the meaning of A.R.S. § 44-1999, and are jointly and severally liable with Sync for Sync's violation of A.R.S. § 44-1991.

9. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

10. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308, which shall be a community obligation for the marital community of Rosicella Joplin and Sean Joplin.

11. Respondents' conduct is grounds to order administrative penalties pursuant to A.R.S. § 44-2036, which shall be a community obligation for the marital community of Rosicella Joplin and Sean Joplin.

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Rosicella Joplin, Christopher Olson, and Sync Title Agency, LLC shall permanently cease and desist from their actions as described above, in violation of A.R.S. §§ 44-1841, 44-1842, and 44-1991, and from engaging in any act, practice, or transaction that constitutes a violation of A.R.S. Title 44, Chapter 12, or any rule or order of the Commission promulgated under A.R.S. Title 44, Chapter 12.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, and as a result of the conduct set forth in the Findings of Fact and Conclusions of Law herein, restitution in the amount of $50,000, payable to the Arizona Corporation Commission, shall be made within 90 days of the effective date of this Decision, jointly and severally, by Respondent Christopher Olson, Respondent Rosicella Joplin as her sole and separate obligation and with Spouse Sean Joplin as a community obligation, and Respondent Sync Title Agency, LLC. Such restitution shall be made pursuant to A.A.C. R14-4-308.

IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an interest-bearing account(s), if appropriate, until distribution is made.

IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the lesser of 10% per annum, or at a rate per annum that is equal to 1% plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or any publication that may supersede it on the date that the judgment is entered.

IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds to investors Marcus and Megan Williams. Any restitution funds that the Commission cannot disburse to the investors because the investors are deceased shall be disbursed to the estates of Marcus and Megan Williams. Any remaining funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036 and as a result of the conduct set forth in the Findings of Fact and Conclusions of Law, Respondents shall pay to the State of Arizona the following administrative penalties:

- Respondent Christopher Olson: $5,000;
- Respondent Rosicella Joplin as her sole and separate obligation and with Spouse Sean Joplin as a community obligation: $5,000; and
- Respondent Sync Title Agency, LLC: $5,000, $3,000 of which is for violations of A.R.S. § 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent Christopher Olson, as his sole and separate obligation, and Respondents Rosicella Joplin and Sean Joplin, as a community obligation, shall also pay jointly and severally with Sync Title Agency, LLC its administrative penalty of $3,000 for violations of A.R.S. § 44-1991, pursuant to A.R.S. § 44-1999(B).

IT IS FURTHER ORDERED that all administrative penalties shall be payable by either cashier's check or money order payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED that the payment obligations for these administrative penalties

shall be subordinate to the restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondents' default with respect to Respondents' restitution obligations.

IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of 10% per annum or at a rate per annum that is equal to 1% plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or any publication that may supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately due and payable, without further notice.

IT IS FURTHER ORDERED that if any of the Respondents fails to comply with this Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. The acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission for its cost of collection and interest at the maximum legal rate.

IT IS FURTHER ORDERED that if any of the Respondents fails to comply with this Order, the Commission may bring further legal proceedings against the Respondent(s) including application to the Superior Court for an order of contempt.

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IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application, the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within 20 calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within 20 calendar days after the application for rehearing is filed, the application for rehearing is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRWOMAN MÁRQUEZ PETERSON COMMISSIONER KENNEDY

COMMISSIONER OLSON COMMISSIONER TOVAR COMMISSIONER O'CONNOR

IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 27 day of July 2022.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SNH/ec

SERVICE LIST FOR: SYNC TITLE AGENCY, LLC, ROSICELLA JOPLIN AND SEAN JOPLIN, AND CHRISTOPHER OLSON

DOCKET NO.: S-21131A-20-0345

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