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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

JUN 29 2004

DOCKETED BY	nr
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In the matter of:

GARY GLEN JOHNSON
6851 West Emile Zola Avenue
Peoria, Arizona 85381

JOHNSON ESTATE PLANNING SERVICE, INC.,
11024 North 28th Drive, Suite 200
Phoenix, Arizona 85029,

JOHNSON ESTATE PLANNING SERVICE, L.L.P.,
11022 North 28th Drive, Suite 250
Phoenix, Arizona 85029,

Respondents.

) DOCKET NO. S-03518A-04-0000

) DECISION NO. 67085

) **ORDER TO CEASE AND DESIST,**
) **ORDER OF DISGORGEMENT,**
) **ORDER FOR ADMINISTRATIVE**
) **PENALTIES AND CONSENT TO SAME**
) **BY: GARY G. JOHNSON, JOHNSON**
) **ESTATE PLANNING SERVICE, INC.,**
) **AND JOHNSON ESTATE PLANNING**
) **SERVICE, L.L.P.**

Respondents GARY GLEN JOHNSON ("JOHNSON"), JOHNSON ESTATE PLANNING SERVICE, INC., and JOHNSON ESTATE PLANNING SERVICE, L.L.P. elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order of Disgorgement, Order for Administrative Penalties and Consent to Same ("Order"). JOHNSON, JOHNSON ESTATE PLANNING SERVICE, INC., and JOHNSON ESTATE PLANNING SERVICE, L.L.P., collectively "RESPONDENTS," admit the jurisdiction of the Arizona

1 Corporation Commission (“Commission”); admit the Findings of Fact and Conclusions of Law
2 contained in this Order; and consent to the entry of this Order by the Commission.

3 **I.**

4 **FINDINGS OF FACT**

5 1. During a period from at least 1995 through 1999, JOHNSON was an owner and
6 operator for JOHNSON ESTATE PLANNING SERVICE, INC., a small financial services
7 company located at 11024 North 28th Drive in Phoenix, Arizona. In this capacity, JOHNSON
8 worked as an estate planner and as an insurance agent licensed with the State of Arizona.

9 2. In 1998, JOHNSON created and became a partner in JOHNSON ESTATE
10 PLANNING SERVICE, L.L.P., another small financial services firm located in the nearby address of
11 11022 North 28th Drive in Phoenix, Arizona. In this related capacity, JOHNSON again served as an
12 estate planner and as an insurance agent licensed with the State of Arizona.

13 3. At no time was JOHNSON ever registered as a securities salesman in the state of
14 Arizona, and at no time were either JOHNSON ESTATE PLANNING SERVICE, INC. or
15 JOHNSON ESTATE PLANNING SERVICE, L.L.P. ever registered as broker/dealers in the state
16 of Arizona.

17 4. In early 1997, JOHNSON was approached by a recruiter for CapitalPro Asset
18 Management Fund, Inc., (“CapitalPro”), a purported equipment-leasing company based out of
19 Newport Beach, California. This recruiter sought to have JOHNSON work as an agent for
20 CapitalPro by promoting, offering, and selling long-term promissory notes.

21 5. Soon thereafter, JOHNSON attended a local recruitment seminar sponsored by
22 CapitalPro. During the course of this presentation, held in Scottsdale, Arizona, a representative for
23 CapitalPro discussed the company’s economic potential and outlined the specifics of CapitalPro’s
24 promissory note program. As part of this presentation, the CapitalPro representative claimed that, for
25 technical reasons, no securities license was required to offer and sell the CapitalPro notes.

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1 11. Per the CapitalPro offering memorandum, the minimum investment amount allowed
2 in connection with the CapitalPro promissory note program was \$10,000. CapitalPro, through its
3 sales agents, originally set out to raise \$5 million in investment capital through this promissory note
4 offering.¹

5 12. CapitalPro investors received annual rates of return on their notes for a period of
6 roughly three to four years. In May 2001, however, the interest payments ceased and, shortly
7 thereafter, CapitalPro notified investors that it had declared bankruptcy.

8 13. A filing made by the trustee of the CapitalPro notes during the subsequent bankruptcy
9 proceeding alleged that the officers and directors of CapitalPro had in fact grossly mismanaged the
10 sale of CapitalPro promissory notes and had misappropriated the resulting funds for, *inter alia*,
11 improper compensation, gifts and loans. The trustee also declared that the note sale proceeds had
12 systematically been exhausted.

13 14. The bankruptcy proceedings resulted in the liquidation of all remaining assets, and the
14 Capital Pro (and CapitalPro II) note-holders were ultimately reimbursed 1 percent of their original
15 investment principal. To date, CapitalPro investors have not received any further distributions.

16 ***JOHNSON's involvement in the CapitalPro note program***

17 15. Based on a review of CapitalPro's promotional literature, and after attending the
18 CapitalPro recruitment seminar and visiting to the company's corporate headquarters, JOHNSON
19 agreed to serve as a sales agent for the CapitalPro promissory note program. Over the next 14
20 months, from July 1997 through August 1998, JOHNSON directly or indirectly engaged in the
21 offer and sale of over a hundred CapitalPro promissory notes to Arizona investors.

22
23 ¹ In 1998, CapitalPro began promoting and offering a second issue of promissory notes,
24 technically referred to as the "CapitalPro Asset Management Fund II, Inc." notes. For all intents and
25 purposes, these long-term promissory notes were nothing more than an extension of the original
26 CapitalPro promissory notes offering from 1997. The single practical effect of this second issue of
notes was to enable CapitalPro to generate another \$10 million in investment capital.
RESPONDENTS sold both the original CapitalPro notes and the subsequent CapitalPro II notes to
Arizona investors.

1 16. In connection with these sales, JOHNSON indicated to prospective investors that
2 the CapitalPro promissory notes could provide far better yields than other portfolio options such as
3 annuities, and that the liquidation of current savings and/or retirement accounts in favor of the
4 CapitalPro notes could be a prudent financial decision.

5 17. Consistent with CapitalPro literature, JOHNSON told prospective investors that
6 these CapitalPro promissory notes were a safe investment option. In so doing, JOHNSON failed to
7 articulate material risks associated with the CapitalPro note program.

8 18. In fact, investments in the CapitalPro promissory notes presented a number of
9 inherent risks. These risks included, without limitation, the fact that this start-up equipment-
10 leasing company could fail and/or declare bankruptcy without a sufficiently funded collateral
11 account, thereby jeopardizing the investors' entire principal.

12 19. From approximately July 1997 through August 1998, JOHNSON played a direct or
13 indirect role in the offer and/or sale of at least 115 CapitalPro promissory notes to at least 83
14 known investors. The principal amount of these promissory note investments totaled
15 approximately \$3.5 million.

16 20. In connection with these sales of CapitalPro promissory notes, RESPONDENTS
17 directly or indirectly received approximately \$398,000 in sales commissions, incentives and
18 bonuses. Of this amount, JOHNSON retained profits of at least \$164,000.

19 21. In 2001, following initial indications of CapitalPro's insolvency, JOHNSON retained
20 counsel to pursue the purported cash collateral funds securing the investments of the CapitalPro note-
21 holders. Despite repeated efforts to access the cash collateral fund and other existing CapitalPro
22 assets, RESPONDENTS were ultimately unsuccessful in recovering any of their clients' investment
23 funds.

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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and any of RESPONDENTS' agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall, jointly and severally, disgorge all sales commission profits earned in connection with their activities in this matter; as reflected in the records of the Commission, such disgorgement shall be in the amount of \$164,000. Payment shall be made in installments as follows: \$15,000 on the date of this Order; \$1,000 per month on or before the 1st day of each month beginning on August 1, 2004. Any installment payments that become outstanding shall accrue interest at the rate of 10% per annum from the installment payment due date until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to all known investors in RESPONDENTS' CapitalPro note offering who currently retain at least one unsatisfied promissory note. Any funds that the Attorney General is unable to disburse shall revert to the state of Arizona. If RESPONDENTS do not comply with the terms and conditions of this disgorgement, any outstanding balance may be deemed in default and, in such case, shall become immediately due and payable; disgorgement amounts deemed in default shall accrue interest at the rate of 10% per annum until paid in full.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall, jointly and severally, pay an administrative penalty in the amount of \$12,500. Payment shall be

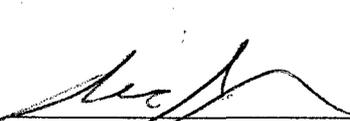
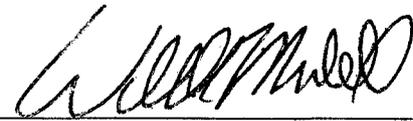
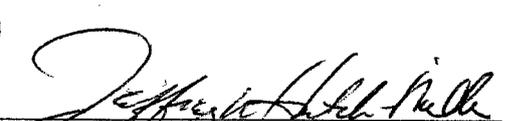
1 made by cashier's check or money order, payable to the "State of Arizona." Payment of this sum
2 shall become due and payable only after disgorgement payments as set forth above have been paid
3 in full or, alternatively, if RESPONDENTS have defaulted prior to fulfilling their disgorgement
4 obligations. Satisfaction of this administrative penalty may be made in one payment or through
5 monthly installment payments in accordance with the terms and conditions for the monthly
6 disgorgement payments as set forth above.

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1 If RESPONDENTS do not comply with the terms and conditions of this administrative
2 penalty, any outstanding balance shall be deemed in default and shall become immediately due and
3 payable; all outstanding administrative penalty amounts that are due and payable shall accrue
4 interest at the rate of 10% per annum until paid in full.

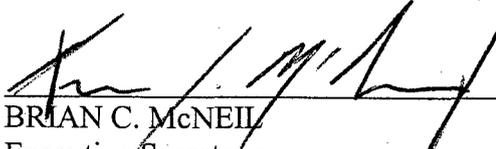
5 IT IS FURTHER ORDERED that this Order shall become effective immediately.

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7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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10 CHAIRMAN COMMISSIONER COMMISSIONER

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12 COMMISSIONER COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
14 Executive Secretary of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the
17 Capitol, in the City of Phoenix, this 29th day of
June, 2004.

18 
19 BRIAN C. McNEIL
Executive Secretary

20 _____
DISSENT

21 _____
22 DISSENT

23
24 This document is available in alternative formats by contacting Yvonne McFarlin, Executive
25 Assistant to the Executive Secretary, telephone number (602) 542-3931, E-mail address
YMcFarlin@cc.state.az.us.

26 (JBP)

CONSENT TO ENTRY OF ORDER

1
2 1. JOHNSON admits the jurisdiction of the Commission over the subject matter of
3 this proceeding. JOHNSON acknowledges that he has been fully advised of his right to a hearing
4 to present evidence and call witnesses and JOHNSON knowingly and voluntarily waives any and
5 all rights to a hearing before the Commission and all other rights otherwise available under
6 Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. JOHNSON
7 acknowledges that this Order to Cease and Desist, Order of Disgorgement, Order for
8 Administrative Penalties and Consent to Same ("Order") constitutes a valid final order of the
9 Commission.

10 2. JOHNSON knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. JOHNSON acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. JOHNSON acknowledges that he has been represented by counsel in this matter
16 and that he has reviewed this Order with his attorney and understands all terms contained therein.

17 5. JOHNSON admits the Findings of Fact and Conclusions of Law contained in this
18 Order.

19 6. By consenting to the entry of this Order, JOHNSON agrees not to take any action
20 or to make, or permit to be made, any public statement denying, directly or indirectly, any
21 Finding of Fact or Conclusion of Law contained in this Order, or to create the impression that this
22 Order is without factual basis. JOHNSON will undertake steps necessary to assure that all of his
23 agents and employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between JOHNSON and the
25 Commission, JOHNSON understands that this Order does not preclude the Commission from
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1 instituting other administrative proceedings based on violations that are not addressed by this
2 Order.

3 8. JOHNSON understands that this Order does not preclude the Commission from
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
5 that may be related to the matters addressed by this Order.

6 9. JOHNSON understands that this Order does not preclude any other agency or
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
8 proceedings that may be related to matters addressed by this Order.

9 10. JOHNSON agrees that he will not apply to the state of Arizona for registration
10 under the Securities Act of Arizona or under the Arizona Investment Management Act for at least
11 five years from the entry date of this Order *and* until such time as all he has complied with all
12 terms and conditions of this Order, including the payment in full of all disgorgement amounts and
13 administrative penalties promulgated under this Order.

14 11. JOHNSON agrees that he will not exercise any control over any entity that offers
15 or sells securities or provides investment advisory services, within or from Arizona, until such
16 time that he has a) complied with all terms and conditions promulgated under this Order, and b)
17 obtained the legal authority to do so.

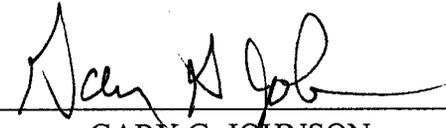
18 12. JOHNSON agrees that until disgorgement and penalties are paid in full,
19 JOHNSON will notify the Director of the Securities Division within 30 days of any change in
20 home address or any change in JOHNSON's ability to pay amounts due under this Order.

21 13. JOHNSON understands that a default shall render him liable to the Commission
22 for its costs of collection and interest at the maximum legal rate.

23 14. JOHNSON understands and agrees that he shall cooperate fully with the Securities
24 Division by, without limitation, providing information pertinent to any related investigation and,
25 if necessary, presenting complete and accurate testimony at any related hearing. JOHNSON
26

1 agrees that he shall similarly cooperate with any other agency of the state of Arizona in any
2 investigation or in any other matter arising from the activities described in this Order.

3 15. JOHNSON consents to the entry of this Order and agrees to be fully bound by its
4 terms and conditions. *If JOHNSON breaches any provision of this Order, the Commission may*
5 *vacate this Order and restore this case to its active docket.*

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8 Agreed: 
9 GARY G. JOHNSON

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12 SUBSCRIBED AND SWORN TO before me, by GARY G. JOHNSON, this 9th day of
13 JUNE, 2004.

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15 
16 NOTARY PUBLIC

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18 My Commission Expires:



KELLY NAUGHTON
Notary Public - Arizona
Maricopa County
Expires 10/14/06

CONSENT TO ENTRY OF ORDER

1
2 1. JOHNSON ESTATE PLANNING SERVICE, INC. and JOHNSON ESTATE
3 PLANNING SERVICE, L.L.P. (collectively, "JEPS") admit the jurisdiction of the Commission
4 over the subject matter of this proceeding. JEPS acknowledge that they have been fully advised
5 of their right to a hearing to present evidence and call witnesses and JEPS knowingly and
6 voluntarily waive any and all rights to a hearing before the Commission and all other rights
7 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
8 Administrative Code. JEPS acknowledge that this Order to Cease and Desist, Order of
9 Disgorgement, Order for Administrative Penalties and Consent to Same ("Order") constitutes a
10 valid final order of the Commission.

11 2. JEPS knowingly and voluntarily waive any right under Article 12 of the Securities
12 Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from
13 the entry of this Order.

14 3. JEPS acknowledge and agree that this Order is entered into freely and voluntarily
15 and that no promise was made or coercion used to induce such entry.

16 4. JEPS acknowledge that they have been advised by counsel in this matter and that
17 they have reviewed this Order with an attorney and understand all terms contained therein.

18 5. JEPS admit the Findings of Fact and Conclusions of Law contained in this Order.

19 6. By consenting to the entry of this Order, JEPS agree not to take any action or to
20 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
21 Fact or Conclusion of Law contained in this Order, or to create the impression that this Order is
22 without factual basis. JEPS will undertake steps necessary to assure that all of its agents and
23 employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between JEPS and the
25 Commission, JEPS understand that this Order does not preclude the Commission from instituting
26 other administrative proceedings based on violations that are not addressed by this Order.

1 8. JEPS understand that this Order does not preclude the Commission from referring
2 this matter to any governmental agency for administrative, civil, or criminal proceedings that may
3 be related to the matters addressed by this Order.

4 9. JEPS understand that this Order does not preclude any other agency or officer of
5 the state of Arizona or its subdivisions from instituting administrative, civil or criminal
6 proceedings that may be related to matters addressed by this Order.

7 10. JEPS agree that they will not apply to the state of Arizona for registration under
8 the Securities Act of Arizona or under the Arizona Investment Management Act for at least five
9 years from the entry date of this Order *and* until such time that they have complied with all terms
10 and conditions of this Order, including the payment in full of all disgorgement amounts and
11 administrative penalties promulgated under this Order.

12 11. JEPS agree that they will not exercise any control over any entity that offers or
13 sells securities or provides investment advisory services, within or from Arizona, until such time
14 that they have a) complied with all terms and conditions promulgated under this Order, and b)
15 obtained the legal authority to do so.

16 12. JEPS agrees that until disgorgement and penalties are paid in full, JEPS will notify
17 the Director of the Securities Division within 30 days of any change in business address or any
18 change in JEPS' ability to pay amounts due under this Order.

19 13. JEPS understands that a default shall render them liable to the Commission for its
20 costs of collection and interest at the maximum legal rate.

21 14. JEPS understands and agrees that they shall cooperate fully with the Securities
22 Division by, without limitation, providing information pertinent to any related investigation or
23 related hearing. JEPS agrees that they shall similarly cooperate with any other agency of the state
24 of Arizona in any investigation or in any other matter arising from the activities described in this
25 Order.

26 ...

1 15. JEPS consents to the entry of this Order and agree to be fully bound by its terms
2 and conditions. *If JEPS breach any provision of this Order, the Commission may vacate this*
3 *Order and restore this case to its active docket.*

4 JOHNSON ESTATE PLANNING SERVICE, INC.

5 By: *[Signature]*
6 Its: PRESIDENT

8 JOHNSON ESTATE PLANNING SERVICE, L.L.P.

9 By: *[Signature]*
10 Its: PRESIDENT

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12
13 SUBSCRIBED AND SWORN TO before me this 9th day of JUNE, 2004,
14 by GARY G. JOHNSON, authorized representative of JOHNSON ESTATE PLANNING
15 SERVICE, INC., and authorized representative of JOHNSON ESTATE PLANNING SERVICE,
16 L.L.P.

17
18 *[Signature]*
19 NOTARY PUBLIC

20 My Commission Expires:



21 **KELLY NAUGHTON**
22 Notary Public - Arizona
23 Maricopa County
24 Expires 10/14/06