

OPEN MEETING ITEM 6/24/04



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

ORIGINAL



BRIAN C. McNEIL
EXECUTIVE SECRETARY

SECURITIES DIVISION 65
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Marc Spitzer, Chairman
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Kristin K. Mayes

Arizona Corporation Commission
DOCKETED

JUN 10 2004

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

DOCKETED BY *[Signature]*

DATE: June 8, 2004

RE: *In the Matter of Wesley Karban Wyatt*, Docket No. S-03529A-03-0000

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same by Wesley Karban Wyatt ("Consent Order"). This order is another of the orders negotiated to resolve claims regarding sales of pay telephone investment contracts involving phones offered by Alpha Telcom and related entities

Salespersons for these pay phone contracts, including Wyatt, were recruited by various means. They were provided with legal opinions stating that the investment contracts in question were not securities (these opinions, however, did not address Arizona law regarding investment contracts). Moreover, during the period when most of the insurance salespersons, including Wyatt, were selling these contracts, a number of jurisdictions had already begun to take action against Alpha Telcom for illegal securities sales. As a result, had Wyatt checked further regarding the legality of the sales, he could have determined that questions had arisen regarding whether the investments should have been registered as securities.

The proposed Consent Order calls for Respondent Wesley Karban Wyatt d/b/a The Financial Greenhouse to cease and desist from further violations of the Arizona Securities Act, to disgorge commissions he received from sales of Alpha Telcom pay telephones within or from Arizona, and to pay an administrative penalty of \$5,000. The Order provides for a payment plan based on Wyatt's current financial status, which includes a negative net worth and a minimal retirement income that is less than \$300 above his current expenses. The Securities Division

recommends approval of this Consent Order. The Order reflects disgorgement of commissions, and the penalty reflects an appropriate penalty for the activity.

Originated by: Kathleen Coughenour DeLaRosa

MJN/kcd

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:)	DOCKET NO. S-03529A-03-0000
WESLEY KARBAN WYATT)	ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION AND CONSENT TO SAME BY RESPONDENT WESLEY KARBAN WYATT
d/b/a THE FINANCIAL GREENHOUSE)	
c/o Harry N. Stone, Attorney at Law)	
3030 North Third Street, Suite 200)	
Phoenix, Arizona 85012)	
Respondents.)	

RESPONDENT WESLEY KARBAN WYATT (“WYATT” or “RESPONDENT”) elects to permanently waive his 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 Restitution, Order for Administrative Penalties and Consent to Same by: Respondent Wesley Karban Wyatt (“Order”). WYATT admits the jurisdiction of the Arizona Corporation Commission (“Commission”); admits the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

**I.
JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

**II.
FINDINGS OF FACT**

2. At all times material hereto, WYATT was a part-time resident of the state of Arizona. WYATT did acts within or from Arizona out of which the claims in this action arose.

1 WYATT was not registered to sell securities within or from the state of Arizona.

2 3. At all times material hereto, WYATT was doing business as THE FINANCIAL
3 GREENHOUSE ("TFG"). TFG is registered with the state of Pennsylvania as an entity with a
4 fictitious name, but not as a corporation or a limited liability company.

5 4. At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon
6 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

7 5. At all times material hereto, American Telecommunications Company, Inc.
8 ("ATC") was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
9 September 17, 1998. Originally named ATC, Inc., the name was changed to American
10 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
11 as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
12 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
13 Pass, Oregon 97526.

14 6. At all times material hereto, Paul S. Rubera ("Rubera") was the president and
15 control person of Alpha, and the control person of ATC.

16 7. ATC was organized by Rubera and operated in conjunction with and as an alter ego
17 of Alpha. The two companies were controlled by Rubera and his associates.

18 8. At all times material hereto, Alpha and ATC, and their affiliates, sold pay
19 telephones with telephone service agreements pursuant to which the investor would share in the
20 profits of the pay telephone. Investors would enter into two agreements, a purchase agreement, and
21 a service agreement with Alpha to manage the phone. The two agreements were presented and
22 promoted simultaneously. The telephones were presented to potential investors with four options
23 in the way of service contracts, each varying in the amount of service provided. The four options
24 varied from Level 1, which included a minimum of service, to Level 4, which provided full service
25 to the purchaser, including choosing a site and installing the telephone, collecting all revenue from
26 the telephone's operation, repairing the telephone when necessary, and even repurchasing or

1 buying back the telephone at the investor's option. Under Level 4, Alpha would split the net
2 proceeds with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving
3 30%. The price of the pay telephones was the same regardless of the service option chosen,
4 \$5,000.00 per telephone. Although investors were given a choice of using a company other than
5 Alpha to manage the phone, no known Arizona investor picked a company other than Alpha to
6 manage their phones. A "typical return" on each pay telephone was touted as 14% per year. In
7 practice, all purchasers received \$58.34 per month per pay telephone purchased, which amounted
8 to exactly 14% per annum.

9 9. ATC's primary role was marketing the contracts. Alpha's main focus was on
10 obtaining phone sites and installing, servicing, and managing the phones.

11 10. ATC was presented to the public as the sales organization for Alpha. In early 1999,
12 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
13 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
14 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
15 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC
16 remained as the processing center for the contracts, while Alpha continued to perform the service
17 and maintenance of the phones.

18 11. WYATT, directly or indirectly, entered into agreements with Alpha, ATC, and/or
19 SPA, pursuant to which WYATT sold investment contracts involving Alpha pay telephones (the
20 "Alpha investment contracts") within or from the state of Arizona. All Alpha investment contracts
21 WYATT sold were Level 4 contracts. At the time of the sale, it was Wyatt's good faith belief that
22 the "Alpha investment contracts" were not investment contracts and not subject to registration.

23 12. WYATT believed and told prospective investors their investments were insured.
24 WYATT'S belief was base on written material and literature which received representing that such
25 inverstments were insured. The insurer named varied. Mentioned most often was the Northern and
26 Western Insurance Company of Grand Turk, Turks and Caicos Islands, British West Indies

1 (“N&W”). Also mentioned were Lloyd’s of London and four other insurance companies listed as
2 re-insurers. N&W was a captive insurance company wholly owned by Paul S. Rubera, the
3 President and control person of Alpha, and Robert S. Harrison of Richmond, Texas. N&W is not
4 authorized to write insurance in Arizona. On information and belief, N&W was not authorized to
5 write insurance in any state in which the Alpha pay telephones were located. In a letter dated
6 August 15, 2001, Harrison stated: “There is not now, nor was there ever any insurance coverage
7 for Alpha Telcom, Inc.”

8 13. WYATT presented Alpha to prospective customers as a stable, profitable, and
9 innovative company that had been in business since 1985. Alpha was said to be selling and
10 providing a “turn-key” operation. At the time of the sale, WYATT had a good faith belief that
11 such representations to prospective customers were true.

12 14. On information and belief, sales agents were paid commissions from 12% to 19%
13 per telephone sold.

14 15. Pursuant to this commission schedule, WYATT sold Alpha investment contracts
15 involving at least 289 telephones to at least 46 individuals or entities within or from the state of
16 Arizona from March, 1999 through July, 2001, for a total sales amount of at least \$1,445,000.

17 16. On information and belief, WYATT also received “override” commissions as a result
18 of having recruited other individuals to sell Alpha investment contracts. WYATT received total
19 commissions of at least \$205,400.00

20 6. Alpha has a long regulatory history in which state securities regulators have found that
21 these purchases of pay telephones and accompanying service contracts were unregistered securities in
22 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
23 Alpha and those working with it to cease and desist. On information and belief, WYATT was not
24 aware of the following orders and did not reveal these orders to the investors with whom he dealt. The
25 orders included:
26

- 1 a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities Commission in *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- 2 b. November 17, 1999, Cease and Desist Order issued by North Carolina Secretary of State in *In the Matter of the North Carolina Securities Division v. ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 3
- 4
- 5 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 6 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201, Alpha agreeing to offer rescission to all Illinois purchasers.
- 7
- 8 e. November 24, 1999, Cease and Desist Order issued by Wisconsin Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*, No. S-99225(EX).
- 9
- 10 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode Island Department of Business Regulation in *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*
- 11
- 12 g. July 18, 2000, Florida Department of Banking and Finance filed administrative action against Alpha and others, seeking a Cease and Desist Order.
- 13
- 14 h. October 24, 2000, Desist and Refrain Order issued by California Department of Corporations.
- 15

16 7. Among actions that have proceeded most recently against Alpha, after the time

17 WYATT ceased selling the investments, are the following:

- 18 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of Securities;
- 19 b. August 27, 2001, Temporary Restraining Order issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA
- 20
- 21 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department in *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- 22
- 23 d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- 24
- 25 e. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- 26

- 1 f. March 13, 2002, Final Order to Cease and Desist issued by Washington
2 Department of Financial Institutions in *In the Matter of Alpha Telcom,*
3 *Inc., et al.*, No. SDO-21-02.

4 The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha
5 and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay
6 expenses, and that the money paid to existing investors always came from sales to new investors.
7 Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha
8 sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-
9 appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on
10 October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not
11 admit the allegations of the Complaint.

- 12 17. Alpha's monthly payments to investors ceased prior to August, 2001.

13 **III.**
14 **CONCLUSIONS OF LAW**

15 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
16 Arizona Constitution and the Securities Act.

17 2. From on or about March 1, 1999, WYATT offered or sold securities in the form of
18 investment contracts, within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-
19 1801(21), and 44-1801(26).

20 3. Without knowledge that he was violating A.R.S. § 44-1841, WYATT offered and
21 sold securities that were neither registered nor exempt from registration.

22 4. Without knowledge that he was violating A.R.S. § 44-1842, WYATT offered and
23 sold securities within or from Arizona while not registered as a dealer or salesman nor exempt from
24 registration.

25 5. WYATT's conduct is grounds for a cease and desist order pursuant to A.R.S.
26 § 44-2032.

6. WYATT's conduct is grounds for an order of restitution pursuant to A.R.S.
§ 44-2032.

1 penalties, any outstanding balance shall be deemed in default and shall be become immediately
2 due and payable.

3 IT IS FURTHER ORDERED THAT the order herein applies only to WESLEY KARBAN
4 WYATT individually and does not apply to WYATT'S marital community or his wife who was
5 previously dismissed from this case.

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

7 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

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9	CHAIRMAN	COMMISSIONER	COMMISSIONER
10			
11	COMMISSIONER		COMMISSIONER

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

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BRIAN C. McNEIL
Executive Secretary

DISSENT

This document is available in alternative formats by contacting Yvonne McFarlin, Executive Assistant to the Executive Secretary, phone number 602-542-3931, E-mail ymcfarlin@cc.state.az.us.
(KCD)

1 or law in any subsequent litigation or other proceeding in which the Commission is not a party.

2 7. While this Order settles this administrative matter between WYATT and the
3 Commission, WYATT understands that this Order does not preclude the Commission from
4 instituting other administrative proceedings based on violations that are not addressed by this
5 Order.

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

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

12 10. WYATT agrees that he will not apply to the state of Arizona for registration as a
13 securities dealer or salesman or for licensure as an investment adviser or investment adviser
14 representative at any time in the future.

15 11. WYATT agrees that he will not exercise any control over any entity that offers or
16 sells securities or provides investment advisory services, within or from Arizona.

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

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

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NEW ORIGINAL
OPEN MEETING ITEM 6/24/04



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



MATT
DIRECTOR
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Marc Spitzer, Chairman
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Kristin K. Mayes

Arizona Corporation Commission
DOCKETED

JUN 10 2004

FROM: Matthew J. Neubert *MJN*
Director of Securities

DOCKETED BY *CR*

DATE: June 9, 2004

RE: Gary G. Johnson, et al. (S-03518A-04-0000); Proposed 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.

CC: Brian C. McNeil, Executive Secretary

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AZ CORP COMMISSION
DOCUMENT CONTROL

Attached is a proposed Order to Cease and Desist, Order of Disgorgement, Order for Administrative Penalties, and Consent to Same ("Order") against respondents Gary G. Johnson ("Johnson"), Johnson Estate Planning Service, Inc., and Johnson Estate Planning Service, L.L.P. in the above-entitled action. In brief, the Order requires respondents to 1) cease and desist from any further violations of the Securities Act of Arizona; 2) make a disgorgement payment equal to the commissions Johnson earned in this matter; and 3) pay a proportionate administrative penalty on account of respondents' actions.

The facts giving rise to this matter began in early 1997, when Johnson was approached by a representative of CapitalPro Asset Management Fund ("CapitalPro") intent on recruiting Johnson to sell long-term promissory notes. The CapitalPro representative advised Johnson that his company's CapitalPro notes were not securities, but that they were still attractive investment alternatives to lower yield products such as annuities. According to CapitalPro offering materials, these CapitalPro notes would provide investors with returns ranging from 8 to 12.6 percent per annum, and that all such notes would be secured by a separate cash collateral account.

After visiting the corporate headquarters of CapitalPro, a purported equipment-leasing company based out of Newport Beach, California, Johnson agreed to sell their product. From July 1997 through August 1998, Johnson and his associates sold approximately 115 CapitalPro promissory notes to approximately 83 Arizona-based investors. In so doing, Johnson individually earned approximately \$164,000 in sales commissions.

In the summer of 2001, Johnson received information that CapitalPro was in fact contemplating bankruptcy, and that as a result, CapitalPro note-holders would no longer be receiving their scheduled interest payments. Shortly thereafter, in the fall of 2001, CapitalPro declared bankruptcy, leaving behind almost no assets or cash reserves. The liquidation that followed resulted in a one-time distribution to note-holders equal to 1 percent of their initial promissory note investments. Johnson continued to pursue additional compensation for his CapitalPro clients through 2002, but was ultimately unsuccessful in securing any additional recovery.

The Order finds that respondents violated the Securities Act of Arizona by offering and selling unregistered securities in the form of CapitalPro promissory notes. On account of this conduct, the Order requires respondents to cease and desist from further violations of the Securities Act, requires respondents to disgorge all commissions earned by Johnson in connection with his sale of CapitalPro notes (\$164,000); and requires respondents to pay an administrative penalty in the amount of \$12,500.

The Securities Division recommends this Order on the grounds that it requires Johnson to disgorge all profits made in connection with the sale of unregistered securities, while assessing an additional penalty to deter such future conduct. This Order also takes into account the fact that Johnson attempted to mitigate the losses of his clients and, subsequently, was cooperative with the Securities Division during the course of its investigation into this matter.

Originator: Jamie B. Palfai

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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. _____

**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.

26 ...

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.

6
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11
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 ____ day of
_____, 2004.

18 _____
19 BRIAN C. McNEIL
Executive Secretary

20 _____
21 DISSENT

22 _____
23 DISSENT

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
26

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.

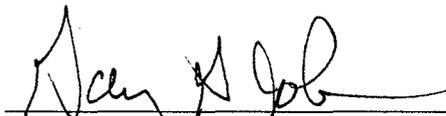
18 12. JOHNSON agrees that until disgorgement and penalties are paid in full,
19 JOHNSON will notify the Director of the Securities Division within 30 days of any change in
20 home address or any change in JOHNSON's ability to pay amounts due under this Order.

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.

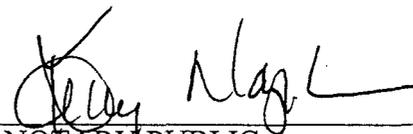
23 14. JOHNSON understands and agrees that he shall cooperate fully with the Securities
24 Division by, without limitation, providing information pertinent to any related investigation and,
25 if necessary, presenting complete and accurate testimony at any related hearing. JOHNSON
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1 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.

14
15 
16 NOTARY PUBLIC

17
18 My Commission Expires:



19 **KELLY NAUGHTON**
20 Notary Public - Arizona
21 Maricopa County
22 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 ...

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

JOHNSON ESTATE PLANNING SERVICE, INC.

By: [Signature]
Its: PRESIDENT

JOHNSON ESTATE PLANNING SERVICE, L.L.P.

By: [Signature]
Its: PRESIDENT

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

[Signature]
NOTARY PUBLIC

My Commission Expires:



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