



0000008098

NEW APPLICATION

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2002 DEC 30 P 2: 59

DOCKETED

DEC 30 2002

AZ CORP COMMISSION
DOCUMENT CONTROL

1
2
3 WILLIAM A. MUNDELL
Chairman
4 JIM IRVIN
Commissioner
5 MARC SPITZER
Commissioner

DOCKETED BY	<i>CAK</i>
-------------	------------

6 In the matter of:
7 MARK E. LABERTEW and JANE DOE
LABERTEW
8 7451 East Beryl
Scottsdale, Arizona 85251
9
10 LES FLEISHMAN and JANE DOE
FLEISHMAN
11 Southport S.D.G., Inc.
5199 East Pacific Coast Highway, Suite 330N
12 Long Beach, California 90804
13 Respondents.

) DOCKET NO. S-03387A-02-0000
)
) **NOTICE OF OPPORTUNITY FOR**
) **HEARING REGARDING PROPOSED**
) **ORDER TO CEASE AND DESIST,**
) **ORDER FOR RESTITUTION, FOR**
) **ADMINISTRATIVE PENALTIES, AND**
) **FOR OTHER AFFIRMATIVE ACTION**

14 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING (See VIII)**

15 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER (See IX)**

16 The Securities Division ("Division") of the Arizona Corporation Commission
17 ("Commission") alleges that RESPONDENTS have engaged in acts, practices and transactions,
18 which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities
19 Act").

20 **I.**

21 **JURISDICTION**

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

24 **II.**

25 **RESPONDENTS**

26 2. RESPONDENT MARK E. LABERTEW ("LABERTEW") at all times relevant

1 hereto was an individual and a resident of the state of Arizona.

2 3. At all times material hereto, Respondent LABERTEW was married to JANE DOE
3 LABERTEW. All acts done by LABERTEW were done in furtherance of and for the benefit of the
4 marital community of LABERTEW and JANE DOE LABERTEW. JANE DOE LABERTEW
5 therefore is joined in this action, pursuant to A.R.S. § 44-2031(C), to determine the liability of the
6 marital community for the violations alleged herein.

7 4. At all times material hereto, Respondent LES FLEISHMAN ("FLEISHMAN") was
8 an individual and a resident of the state of California.

9 5. At all times material hereto, Respondent FLEISHMAN was married to JANE DOE
10 FLEISHMAN. All acts done by FLEISHMAN were done in furtherance of and for the benefit of the
11 marital community of FLEISHMAN and JANE DOE FLEISHMAN. JANE DOE FLEISHMAN
12 therefore is joined in this action, pursuant to A.R.S. § 44-2031(C), to determine the liability of the
13 marital community for the violations alleged herein.

14 6. LABERTEW, FLEISHMAN, JANE DOE LABERTEW, and JANE DOE
15 FLEISHMAN collectively may be referred to herein as "RESPONDENTS." JANE DOE
16 LABERTEW and JANE DOE FLEISHMAN collectively may be referred to herein as
17 "RESPONDENT SPOUSES."

18 **III.**

19 **FACTS**

20 **The Companies Involved**

21 7. Tracker International, Inc. ("Tracker"), at all times relevant hereto, was an Arizona
22 corporation, incorporated on or about October 23, 1998. At all times relevant hereto, LABERTEW
23 was the President, Chief Executive Officer, and a Director of Tracker. Tracker held itself out as
24 being in the business of developing, marketing, distributing, leasing, and selling global-positioning-
25 system tracking, monitoring, and data-retrieval units ("GPS units") for placement in vehicles and
26 machinery. The Corporations Division of the Commission administratively dissolved Tracker on or

1 about May 14, 2001, due to its failure to maintain a statutory agent.

2 8. Tracker has never been registered to sell securities in Arizona as a broker-dealer or an
3 issuer.

4 9. E*Credit, Inc. ("E*Credit"), at all times relevant hereto, was a Delaware corporation
5 authorized to do business in Arizona. E*Credit was incorporated on or about February 9, 1999, and
6 was authorized to do business in Arizona on or about February 9, 1999. At all times relevant hereto,
7 LABERTEW was the President, Chief Executive Officer, and a Director of E*Credit. E*Credit held
8 itself out as being in the business of sub-prime automotive lending. E*Credit's authority to do
9 business in Arizona was revoked on or about June 6, 2002, by the Corporations Division of the
10 Commission for failure to file its required annual report with the Commission.

11 10. E*Credit has never been registered to sell securities in Arizona as a broker-dealer or
12 an issuer.

13 11. Southport S.D.G., Inc. ("Southport"), at all times relevant hereto, was a California
14 corporation, with its principal office at 5199 East Pacific Coast Highway, Suite 330N, Long Beach,
15 California 90804. Southport acted as Tracker's agent for the purposes of selling shares of Tracker
16 stock. Southport has been registered with the National Association of Securities Dealers ("NASD")
17 as a securities dealer, CRD #46278. Southport is not currently registered with the NASD as a
18 securities dealer. Southport was never registered as a securities dealer in Arizona.

19 12. At all times relevant hereto, FLEISHMAN was both a Director of Tracker and the
20 President of Southport. At times, FLEISHMAN was registered with the NASD as a securities
21 broker, CRD #8975931. FLEISHMAN is not currently registered as a securities broker with the
22 NASD. FLEISHMAN was never registered to sell securities within or from Arizona.

23 **Sales of Stock in Tracker**

24 13. Beginning on or about May 22, 1998, RESPONDENTS sold shares of common stock
25 in Tracker within or from Arizona.

26 14. On or about December 10, 1998, Tracker filed a Form D, Notice of Sale of Securities

1 Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption ("Form D")
2 with the Division. In this filing, Tracker gave notice it intended to make a limited offering of
3 common stock totaling \$5,000,000 to residents of the states of Alabama, Georgia, Hawaii,
4 Minnesota, New York, and Oregon, pursuant to the federal registration exemption for such an
5 offering. That federal exemption is recognized as an exemption from registration under Arizona law.

6 15. On its Form D, Tracker indicated it was a Delaware corporation, although it actually
7 is an Arizona corporation, incorporated with the Corporations Division of the Commission on or
8 about October 23, 1998.

9 16. Although Tracker filed a Form D with the Division, Tracker's Form D did not
10 indicate it intended to offer shares to residents of Arizona, or of any state other than those listed.

11 17. Because RESPONDENTS began selling Tracker stock on or about May 22, 1998,
12 RESPONDENTS failed to comply with the requirement of R14-4-126(D)(1)(a), Ariz. Admin. Code,
13 calling for filing of an initial Form D within fifteen days after the date of first sale of securities for
14 which the filer seeks a registration exemption.

15 18. RESPONDENTS failed to comply with the requirements of R14-4-126(D), Ariz.
16 Admin. Code, which called for filing of an updated Form D with the Division following termination
17 or completion of the offering.

18 19. In the course of the offer and sale of shares of Tracker common stock,
19 RESPONDENTS directly or indirectly (i) employed a device, scheme or artifice to defraud; (ii) made
20 untrue statements of material fact or omitted to state material facts that were necessary to make the
21 statements made not misleading in light of the circumstances under which they were made; and
22 (iii) engaged in transactions, practices, or courses of business that operated or would operate as a
23 fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited
24 to:

25 a) RESPONDENTS represented that the stock would be sold as a limited
26 offering, that is, that only accredited investors would be permitted to purchase the shares and

1 that there would be no public offering of those shares. In fact, RESPONDENTS and their
2 employees and/or agents "cold-called" prospective investors, thus making a public offering
3 of the shares. RESPONDENTS also accepted investments from persons who did not meet
4 the income, asset, or knowledge requirements for investors in a limited offering.
5 RESPONDENTS failed to advise potential investors of the possible consequences of its
6 failure to abide by the requirements for a limited offering, and of its failure to register the
7 shares for sale.

8 b) RESPONDENTS represented that particular companies intended to purchase
9 Tracker's GPS unit to be placed in vehicles owned by those companies. In fact, some
10 companies had not even been in contact with Tracker regarding its GPS unit, and other
11 companies, although they had been in contact with Tracker (usually because Tracker
12 employees or agents had contacted them), did not intend to purchase Tracker's GPS unit.

13 c) RESPONDENTS did not adequately reveal the purposes for which the funds
14 invested in Tracker common stock would be used.

15 d) RESPONDENTS failed to give investors adequate information regarding
16 actual and/or potential conflicts of interest involving LABERTEW that arose from his
17 simultaneously serving as President of Tracker, E*Credit, and other entities.

18 e) RESPONDENTS did not disclose the possible conflict of interest of
19 FLEISHMAN as a Director of Tracker and an officer of Southport.

20 f) RESPONDENTS did not disclose FLEISHMAN's criminal history or the
21 existence and substance of regulatory sanctions entered against FLEISHMAN.

22 g) RESPONDENTS failed to provide to potential investors material financial
23 statements and reports prepared in accordance with generally accepted accounting principles
24 and prepared at a time reasonably near the sale of the securities to investors. Such reports
25 were necessary to give potential investors an understanding of the current financial condition
26 of Tracker, its business, and the securities being offered. In particular, RESPONDENTS

1 failed to provide to potential investors an audited balance sheet, income statements, cash
2 flow, and/or changes in stockholders' equity statements for the issuer. The only financial
3 information provided was an unaudited balance sheet as of July 31, 1998, a significant period
4 of time prior to the offers and sales.

5 h) LABERTEW failed to disclose material adverse business and legal matters
6 related to his business experience and involvement, which occurred within five years prior to
7 the offering and sale of Tracker stock, including orders issued against Tracker and
8 LABERTEW by Pennsylvania and Oregon securities regulatory entities.

9 i) RESPONDENTS continued to cause issuance of shares of stock in Tracker
10 after the Commission had terminated Tracker's authority to do business.

11 20. RESPONDENTS sold or transferred at least 12,425,800 shares of Tracker stock to at
12 least 200 individuals or entities.

13 21. On information and belief, RESPONDENTS collected more than \$3 million dollars
14 as a result of their sales or transfers of stock in Tracker.

15 **Sales of Stock in E*Credit**

16 22. Beginning on or about October 5, 1999, RESPONDENTS sold shares of common
17 stock in E*Credit within or from Arizona.

18 23. E*Credit's stock offering was not registered with the Division, and E*Credit did not
19 make any filing with the Division regarding any exemption from registration. E*Credit's stock sales
20 apparently were made pursuant to a Disclosure Memorandum dated October 5, 1999, which stated
21 E*Credit intended to rely upon a private placement exemption from registration.

22 24. In the course of the offer and sale of shares of E*Credit stock, RESPONDENTS
23 directly or indirectly (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements
24 of material fact or omitted to state material facts that were necessary to make the statements made
25 not misleading in light of the circumstances under which they were made; and (iii) engaged in
26 transactions, practices, or courses of business that operated or would operate as a fraud or deceit

1 upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to:

2 a) RESPONDENTS represented that the stock would be sold as a limited
3 offering, that is, that only accredited investors would be permitted to purchase the shares and
4 that there would be no public offering of those shares. In fact, RESPONDENTS and their
5 employees and/or agents "cold-called" prospective investors, thus making a public offering
6 of the shares. RESPONDENTS also accepted investments from persons who did not meet
7 the income, asset, or knowledge requirements for investors in a limited offering.
8 RESPONDENTS failed to advise potential investors of the possible consequences of their
9 failure to abide by the requirements for a limited offering, and of their failure to register the
10 shares for sale.

11 b) RESPONDENTS failed to disclose adequately the relationship between
12 E*Credit and Tracker and potential conflicts of interest arising therefrom, although they
13 represented that E*Credit would purchase GPS units from Tracker to be placed in vehicles
14 financed by E*Credit.

15 c) RESPONDENTS did not disclose the possible conflict of interest of
16 FLEISHMAN as a Director of Tracker and an officer of Southport.

17 d) RESPONDENTS did not disclose FLEISHMAN's criminal history or the
18 existence and substance of regulatory sanctions entered against FLEISHMAN.

19 e) RESPONDENTS did not disclose the actual and/or potential conflict of
20 interest of LABERTEW as President of E*Credit and President of Tracker, as well as
21 President of other business entities.

22 f) RESPONDENTS did not adequately reveal the purposes for which the
23 E*Credit stock investments would be utilized by E*Credit and RESPONDENTS.

24 g) RESPONDENTS failed to provide to potential investors material financial
25 statements and/or financial information and reports prepared in accordance with generally
26 accepted accounting principles and prepared at a time reasonably near the sale of the

1 securities to investors. Such reports were necessary to give potential investors an
2 understanding of the current financial condition of E*Credit, its business, and the securities
3 being offered. In particular, RESPONDENTS failed to provide to potential investors an
4 audited balance sheet, income statements, cash flow, and/or changes in stockholders' equity
5 statements for the issuer.

6 h) LABERTEW failed to disclose material adverse business and legal matters
7 related to his business experience and involvement, which occurred within five years prior to
8 the offering and sale of E*Credit stock, including orders against LABERTEW entered by
9 securities regulatory agencies in Oregon and Pennsylvania.

10 25. RESPONDENTS sold or transferred at least 24,580,000 shares of E*Credit stock to
11 at least 41 persons or entities.

12 26. On information and belief, RESPONDENTS collected \$65,000 or more as a result of
13 their sales or transfers of E*Credit stock.

14 **IV.**

15 **VIOLATION OF A.R.S. § 44-1841**

16 **(Offer or Sale of Unregistered Securities)**

17 27. From on or about May 22, 1998 through on or about September 23, 2002,
18 RESPONDENTS offered or sold securities in the form of shares of stock in Tracker, within or from
19 Arizona.

20 28. From on or about February 12, 2000 through on or about December 20, 2000,
21 RESPONDENTS offered or sold securities in the form of shares of stock in E*Credit, within or from
22 Arizona.

23 29. The securities referred to above were not registered pursuant to the provisions of
24 Articles 6 or 7 of the Securities Act, and were not exempt from registration thereunder.

25 30. This conduct violates A.R.S. § 44-1841.

26 ...

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

31. RESPONDENTS offered or sold securities within or from Arizona, while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

32. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

33. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

a) RESPONDENTS represented that stock in Tracker and in E*Credit would be sold as limited offerings, that is, that only accredited investors would be permitted to purchase the shares and that there would be no public offering of those shares. In fact, RESPONDENTS and their employees and/or agents "cold-called" prospective investors, thus making a public offering of the shares. RESPONDENTS also accepted investments from persons who did not meet the income, asset, or knowledge requirements for investors in a limited offering. RESPONDENTS failed to advise potential investors of the possible consequences of their failure to abide by the requirements for limited offerings, and of their failure to register the shares for sale.

b) RESPONDENTS represented that particular companies intended to purchase

1 Tracker's GPS unit to be placed in vehicles owned by those companies. In fact, some
2 companies had not even been in contact with Tracker regarding its GPS unit, and other
3 companies, although they had been in contact with Tracker (usually because Tracker
4 employees or agents had contacted them), did not intend to purchase Tracker's GPS unit.

5 c) RESPONDENTS failed to disclose adequately the relationship between
6 E*Credit and Tracker and potential conflicts of interest arising therefrom, although they
7 represented that E*Credit would purchase GPS units from Tracker to be placed in vehicles
8 financed by E*Credit.

9 d) RESPONDENTS failed to disclose actual and/or potential conflicts of interest
10 on the part of LABERTEW as an officer of both Tracker and E*Credit, and as an officer
11 and/or director of other business entities to which cash from Tracker was transferred.

12 e) RESPONDENTS did not disclose the possible conflict of interest of
13 FLEISHMAN as a Director of Tracker and an officer of Southport.

14 f) RESPONDENTS did not disclose FLEISHMAN's criminal history or the
15 existence and substance of regulatory sanctions entered against FLEISHMAN.

16 g) RESPONDENTS did not adequately reveal the purposes to which the Tracker
17 and E*Credit stock investments would be used by Tracker, E*Credit, and RESPONDENTS.

18 h) RESPONDENTS failed to provide to potential investors material financial
19 statements and/or financial information and reports prepared in accordance with generally
20 accepted accounting principles and prepared at a time reasonably near the sale of the
21 securities to investors. Such information and reports were necessary to give potential
22 investors an understanding of the current financial condition of Tracker and/or E*Credit,
23 their business, and the securities being offered. For example, RESPONDENTS failed to
24 provide to potential investors an audited balance sheet, income statements, cash flow, and/or
25 changes in stockholders' equity statements for the issuer.

26 i) LABERTEW failed to disclose material adverse business and legal matters

1 related to his business experience and involvement, which occurred within five years prior to
2 the offering and sale of stock in Tracker and/or E*Credit, including orders entered against
3 LABERTEW by securities regulatory agencies in Oregon and Pennsylvania.

4 34. This conduct violates A.R.S. § 44-1991.

5 35. RESPONDENTS made, participated in, or induced the sale of a security within the
6 meaning of A.R.S. § 44-2003. Therefore, RESPONDENTS are jointly and severally liable for the
7 above violations of A.R.S. §§ 44-1841, 44-1842, and 44-1991.

8 **VII.**

9 **REQUESTED RELIEF**

10 The Division requests that the Commission grant the following relief against
11 RESPONDENTS:

12 1. Order RESPONDENTS to permanently cease and desist from violating the Securities
13 Act, pursuant to A.R.S. § 44-2032;

14 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting
15 from their acts, practices or transactions, including a requirement to make restitution pursuant to
16 A.R.S. § 44-2032;

17 3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to
18 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
19 and

20 4. Order any other relief that the Commission deems appropriate.

21 **VIII.**

22 **HEARING OPPORTUNITY**

23 RESPONDENTS (including RESPONDENT SPOUSES) may request a hearing pursuant to
24 A.R.S. § 44-1972 and Ariz. Admin. Code R14-4-306. **If any RESPONDENT requests a hearing,**
25 **the RESPONDENT must also answer this Notice.** A request for hearing must be in writing and
26 received by the Commission within 10 business days after service of this Notice of Opportunity for

1 Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona
2 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover
3 sheet must accompany the request. A cover sheet form and instructions may be obtained from
4 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
5 www.cc.state.az.us/utility/forms/index.htm.

6 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
7 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
8 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
9 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
10 the Division in this Notice of Opportunity for Hearing.

11 Persons with a disability may request a reasonable accommodation such as a sign language
12 interpreter, as well as request this document in an alternative format, by contacting Shelly M.
13 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
14 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
15 accommodation.

16 XIV.

17 ANSWER REQUIREMENT

18 Pursuant to A.A.C. R14-4-305, if any RESPONDENT requests a hearing, RESPONDENT
19 must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control,
20 Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30
21 calendar days after the date of service of this Notice of Opportunity for Hearing. A Docket Control
22 cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained
23 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
24 www.cc.state.az.us/utility/forms/index.htm.

25 Additionally, RESPONDENT must serve the Answer upon the Division. Pursuant to
26 A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a

1 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
2 addressed to Kathleen Coughenour DeLaRosa.

3 The Answer shall contain an admission or denial of each allegation in this Temporary
4 Order and Notice and the original signature of each RESPONDENT or RESPONDENT's attorney.
5 A statement of a lack of sufficient knowledge or information shall be considered a denial of an
6 allegation. An allegation not denied shall be considered admitted.

7 When RESPONDENT intends in good faith to deny only a part or a qualification of an
8 allegation, RESPONDENT shall specify that part or qualification of the allegation and shall admit
9 the remainder. RESPONDENT waives any affirmative defense not raised in the answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an
11 Answer for good cause shown.

12 DATED this 18th day of December, 2002.

13 
14 _____
15 Mark Sendrow
16 Director of Securities

17 Tracker Notice of Opportunity for Hearing.doc (KCD)

18
19
20
21
22
23
24
25
26

NEW APPLICATION

Memorandum

DATE: December 18, 2002
TO: Nancy Cole
Docket Control
FROM: Kathleen Coughenour DeLaRosa
Securities Division
RE: In the Matter of Mark E. Labertew, et ux., et al.,
Docket No. S-03387A-02-0000
Assigned Staff
CC: Mabel Aldridge

RECEIVED

2002 DEC 30 P 2:59

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission
DOCKETED

DEC 30 2002

DOCKETED BY	CAR
-------------	-----

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert

Kathleen Coughenour DeLaRosa (Staff Attorney)

Terry Nelson (Staff Investigator)
