

NEW

OPEN MEETING ITEM

10/14/04



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

ORIGINAL



SECURITIES DIVISION
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GIS

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

FROM: Matthew J. Neubert
Director of Securities

MJN

SEP 16 2004

DOCKETED BY *[Signature]*

DATE: September 15, 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 SEP 16 P 2:55

RECEIVED

RE: Rex Kuhn/Unity Financial, DOCKET NO. S-3555A-04-0000

CC: Brian C. McNeil, Executive Secretary

This matter involves a consent Order by Rex Kuhn and Unity Financial. Rex Kuhn has already provided the Arizona Corporation Commission with a check for \$50,000.00 as payment toward restitution for the defrauded investors, upon approval of this Order by the Commission.

Rex Kuhn ("KUHN") is a resident of the state of Arizona. KUHN was not registered as a securities salesman or licensed as an investment advisor in the State of Arizona. Unity Financial Services ("UNITY") is an Arizona limited liability company. UNITY was not registered as a securities broker/dealer in the State of Arizona. KUHN is the named Manager for UNITY.

Between 1999 and the present, KUHN and UNITY sold promissory notes within and from the State of Arizona. The securities in question were not registered, nor were they exempt from registration.

KUHN and UNITY began soliciting investments from KUHN's family and friends in 1999. The alleged purpose of the investments was to allow KUHN and UNITY to invest the money in the stock market. KUHN and UNITY promised investors, through written contracts, a guaranteed return on their investments of 10-40% per annum. KUHN and UNITY engaged extensively in day trading in their brokerage account. They generally traded in options on margin.

Throughout the vast majority of the course of operation of KUHN and UNITY'S business, KUHN and UNITY used amounts invested by new investors to pay monies owed to earlier investors. KUHN and UNITY lost a substantial portion of their portfolio through poor investments, and further depleted their assets by using the monies to pay KUHN's personal expenses.

KUHN raised approximately \$2,132,517.03 from approximately 26 investors, of which approximately 17 are residents of Arizona. The investors received back approximately \$522,203.13.

The Order finds that KUHN and UNITY violated A.R.S. § 44-1841 and 44-1842 by selling unregistered securities while being unlicensed. It also finds that they committed numerous violations of A.R.S. §44-1991 by failing to disclose risk, failing to advise investors regarding their lack of experience in trading, failing to advise investors that the promissory notes were securities, failing to disclose that investor funds would be used for KUHN'S personal expenses and materially misrepresenting the financial conditional of UNITY. KUHN controlled UNITY and is thus responsible for its activities.

The amount that KUHN and UNITY owe to investors is \$1,627,564.05 which includes initial investments and interest at 10% per annum from October 14, 2004. In addition, KUHN and UNITY will pay administrative penalties in the amount of \$15,000.

I.

FINDINGS OF FACT

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3 1. Respondent KUHN is a resident of the state of Arizona, with a last known residence
4 address at 3134 East McKellips, Unit 193, Mesa AZ 85213.

5 2. At all times material hereto, KUHN was not registered as a securities salesman nor
6 licensed as an investment advisor in the State of Arizona.

7 3. UNITY is an Arizona limited liability company. At all times material hereto,
8 UNITY was not registered as a securities broker/dealer in the State of Arizona.

9 4. KUHN is the named Manager for UNITY.

10 5. Between 1999 and the present, RESPONDENTS offered for sale and sold securities
11 in the form of promissory notes within and from the State of Arizona. The securities in question
12 were not registered, nor were they exempt from registration.

13 6. RESPONDENTS began soliciting investments from KUHN's family and friends in
14 1999. The purpose of the investments was to allow RESPONDENTS to invest the money in the
15 securities market. RESPONDENTS promised investors, through written contracts, a guaranteed
16 return on their investments. RESPONDENTS issued to investors written promissory notes that
17 indicated an interest rate of 10-40% per annum.

18 7. RESPONDENTS informed investors that they would be engaging in stock market
19 investments.

20 8. RESPONDENTS engaged extensively in option trading in puts and calls. The
21 trading was day trading and short term trading on margin. Day trading is a trading strategy in
22 which the investor buys and sells securities in a very limited time frame. The purchase of options is
23 speculative, day trading in securities is speculative, and trading on margin is speculative.
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1 9. Throughout the vast majority of the course of operation of RESPONDENTS'
2 business, RESPONDENTS used amounts invested by new investors to pay monies owed to earlier
3 investors.

4 10. RESPONDENTS lost a substantial portion of their portfolio through poor
5 investments, and further depleted their assets by using the monies to pay KUHN's personal expenses.

6 11. RESPONDENTS made untrue statements or misleading omissions of material facts,
7 including, but not limited to, the following:

8 a) KUHN failed to advise all investors of his lack of experience in trading.

9 b) KUHN failed to advise all investors that neither KUHN nor UNITY was
10 registered as a securities salesman or dealer.

11 c) RESPONDENTS failed to advise investors that the promissory notes were
12 securities, and were required to be registered as such or exempt from registration under Arizona
13 law.
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15 d) RESPONDENTS failed to fully disclose to investors the substantial risks of
16 their speculative trading.

17 e) RESPONDENTS failed to advise all investors that KUHN would use
18 investor funds for his personal expenses.

19 f) RESPONDENTS materially misrepresented their cash flow and true
20 financial condition regarding indebtedness.

21 g) RESPONDENTS consistently issued false statements to the investors
22 indicating that their capital investment had been preserved and that interest was accruing on each
23 investor's money, when in fact the money had been depleted by poor investments and through
24 spending to support KUHN's personal expenses.
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III.**ORDER**

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

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

9 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that RESPONDENTS shall,
10 jointly and severally, pay restitution to investors shown on the records of the Commission in the
11 amount of \$1,627,564.05, plus interest at the rate of 10% per annum from October 14, 2004 until
12 paid in full. Payment shall be made as follows: \$50,000.00 immediately on October 14, 2004.
13 The amount outstanding shall accrue interest at the rate of 10% per annum from October 14, 2004
14 until paid in full. Any remaining amount not paid on this date may be referred for possible
15 collections without further Notice or Demand. Payment shall be made by cashier's check or money
16 order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and
17 controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the
18 funds on a pro rata basis to investors. Any funds that the Attorney General is unable to disburse
19 shall revert to the State of Arizona. If RESPONDENTS do not comply with this Order of
20 restitution, any outstanding balance shall be in default and shall be immediately due and payable.

21 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that RESPONDENTS shall pay an
22 administrative penalty in the amount of \$15,000.00. Payment shall be made in full by cashier's
23 check or money order on the date of this Order, payable to the "State of Arizona." Any amount
24 outstanding shall accrue interest at the rate of 10% per annum from October 14, 2004 until paid in
25 full. The payment obligations for these administrative penalties shall be subordinate to any
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1 restitution obligations ordered herein and shall become immediately due and payable only after
2 restitution payments have been paid in full.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8 COMMISSIONER

COMMISSIONER

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

15 _____
16 BRIAN C. McNEIL
17 Executive Secretary

18 _____
19 DISSENT

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

23 (MMA)

CONSENT TO ENTRY OF ORDER

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2 1. RESPONDENT REX E. KUHN (“KUHN”), an individual, admits the jurisdiction of
3 the Commission over the subject matter of this proceeding. KUHN acknowledges that he has been
4 fully advised of his right to a hearing to present evidence and call witnesses and KUHN knowingly
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. KUHN acknowledges that this Order to Cease and Desist, Order of
8 Restitution, Order for Administrative Penalties and Consent to Same by Respondent Unity
9 Financial, LLC and by Respondent Rex E. Kuhn (“Order”) constitutes a valid final order of the
10 Commission.

11 2. KUHN knowingly and voluntarily waives 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 the
13 entry of this Order.

14 3. KUHN acknowledges that he has been represented by counsel in this matter, he has
15 reviewed this Order with his attorney and understands all terms it contains.

16 4. KUHN neither admits nor denies the Findings of Fact and Conclusions of Law
17 contained in this Order. KUHN agrees that he shall not contest their validity in any present or
18 future administrative proceeding before the Commission or any other state agency concerning the
19 denial or issuance of any license or registration required by the State to engage in the practice of
20 any business or profession.

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

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

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

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

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

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

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

19 12. KUHN understands that default shall render him liable to the Commission for its costs
20 of collection and interest at the maximum legal rate.

21 13. KUHN consents to the entry of this Order and agrees to be fully bound by its terms and
22 conditions. If KUHN breaches any provision of this Order, the Commission may vacate this Order
23 and restore this case to its active docket.

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Rex E. Kuhn

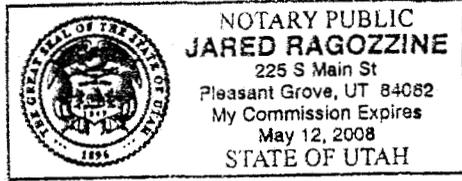
REX E. KUHN

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of August, 2004.

NOTARY PUBLIC

My Commission Expires:

05/08



CONSENT TO ENTRY OF ORDER

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2 14. RESPONDENT UNITY FINANCIAL, LLC ("UNITY") admits the jurisdiction of the
3 Commission over the subject matter of this proceeding. UNITY acknowledges that it has been
4 fully advised of its right to a hearing to present evidence and call witnesses and UNITY knowingly
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. UNITY acknowledges that this Order to Cease and Desist, Order of
8 Restitution, Order for Administrative Penalties and Consent to Same by Respondent Unity
9 Financial, LLC and by Respondent Rex E. Kuhn ("Order") constitutes a valid final order of the
10 Commission.

11 15. UNITY knowingly and voluntarily waives 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 the
13 entry of this Order.

14 16. UNITY acknowledges that it has been represented by counsel in this matter, has
15 reviewed this Order with its attorney and understands all terms it contains.

16 17. UNITY neither admits nor denies the Findings of Fact and Conclusions of Law
17 contained in this Order. UNITY agrees that it shall not contest their validity in any present or
18 future administrative proceeding before the Commission or any other state agency concerning the
19 denial or issuance of any license or registration required by the State to engage in the practice of
20 any business or profession.

21 18. By consenting to the entry of this Order, UNITY agrees not to take any action or to
22 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
23 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
24 factual basis. UNITY will undertake steps necessary to assure that all of its agents and employees
25 understand and comply with this agreement.
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1 19. While this Order settles this administrative matter between UNITY and the
2 Commission, UNITY understands that this Order does not preclude the Commission from
3 instituting other administrative proceedings based on violations that are not addressed by this
4 Order.

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

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

11 22. UNITY agrees that it will not apply to the state of Arizona for registration as a
12 securities dealer or salesman or for licensure as an investment adviser or investment adviser
13 representative at any time in the future.

14 23. UNITY agrees that it will not exercise any control over any entity that offers or sells
15 securities or provides investment advisory services, within or from Arizona.

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

19 25. UNITY understands that default shall render UNITY liable to the Commission for the
20 Commission's costs of collection and interest at the maximum legal rate.

21 26. UNITY consents to the entry of this Order and agrees to be fully bound by its terms and
22 conditions. If UNITY breaches any provision of this Order, the Commission may vacate this
23 Order and restore this case to its active docket.

24 ...
25 ...
26 ...

1 27. KUHN represents that he is the Manager of UNITY and has been authorized by
2 UNITY to enter into this Order for and on behalf of it. KUHN represents that he is authorized by
3 law to enter into this Order for and on behalf of UNITY.

4 UNITY FIANCIAL LLC

5 *Rex E. Kuhn*

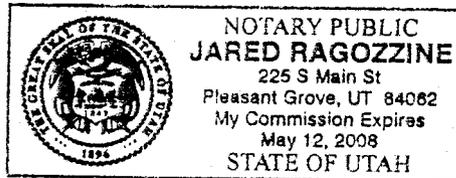
6
7 By REX E. KUHN
8 Its Manager

9 SUBSCRIBED AND SWORN TO BEFORE me this 18 day of August, 2004.

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11 *[Signature]*
12 NOTARY PUBLIC

13 My Commission Expires:

14 05/08



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