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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

DOCKETED

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In the matter of:

DOCKET NO. S-03569A-04-0000

RONALD EARL PFINGSTEN, a married man
PMB #368, PO Box 439060
San Ysidoro, CA 92143

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
ORDER FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES, AND
FOR OTHER AFFIRMATIVE ACTION

SHARLENE N. PFINGSTEN, a married woman
PMB #368, PO Box 439060
San Ysidoro, CA 92143

Respondents.

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

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

I.

JURISDICTION

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

II.

RESPONDENTS

2. Respondent RONALD E. PFINGSTEN ("PFINGSTEN"), whose last known residential address is PMB #368, P.O. Box 439060, San Ysidoro, California 92143 and last known business address is 9627 W. Lindgren, Sun City, Arizona 85373, is and was, at all times relevant hereto, an

1 insurance agent licensed with the State of Arizona.

2 3. Respondent SHARLENE N. PFINGSTEN, whose last known residential address is PMB
3 #368, P.O. Box 439060, San Ysidoro, California 92143, was at all relevant times the spouse of
4 Respondent PFINGSTEN. SHARLENE N. PFINGSTEN is joined in this action under A.R.S. § 44-
5 2031(C) solely for purposes of determining the liability of the marital community.

6 4. At all times relevant, Respondent PFINGSTEN and SHARLENE N. PFINGSTEN were
7 acting for their own benefit, and for the benefit or in furtherance of the marital community.

8 5. Respondent RONNALD E. PFINGSTEN may be referred to as "RESPONDENT."
9 SHARLENE N. PFINGSTEN may be referred to as "RESPONDENT SPOUSE."

10 **III.**

11 **FACTS**

12 6. A viatical settlement is the sale of a life insurance policy by a terminally ill policy owner
13 (the "insured" or "viator") to a third party at a discount from the life insurance policy's face value.
14 The third party who, in turn, sells the beneficial interest in the policy's death benefit is known as
15 the "viatical settlement provider." Viatical settlement providers usually sell fractionalized interest
16 in the policy's death benefit to investors at a markup from the third party's purchase price but less
17 than the policy face value. The third party may remain as the owner of the policy with the
18 investors designated as beneficiaries. Upon the viator's death, the viatical settlement "matures"
19 and the investors receive their assigned portion of the policy's death benefit.

20 7. A life settlement is similar to a viatical settlement except that the insured does not have a
21 terminal illness.

22 8. Mutual Benefits Corporation ("MBC") is a viatical settlement provider company located at
23 2881 E. Oakland Park Blvd., Suite 200, Ft. Lauderdale, Florida 33306. MBC sells viatical
24 settlements to investors through agents such as insurance and securities salespersons.

25 9. From approximately 1995 through January 2003, MBC sold viatical and life settlements
26

1 (collectively referred to as "viaticals") through individual and business entity agents to Arizona
2 investors.

3 10. Prior to July 18, 2000, viaticals were regulated as investment contracts under the Securities
4 Act. As investment contracts, viaticals were required to be registered in Arizona unless a viatical
5 sale qualified for a transactional exemption.

6 11. Prior to July 18, 2000, dealer and salesman registration requirements also applied to
7 viatical providers and their sales agents.

8 12. Effective July 18, 2000, revisions to the Securities Act codified the existing investment
9 contracts analysis with respect to viaticals by revising A.R.S. §§44-1801(26) and (29) and adding
10 A.R.S. §44-1850 (collectively referred to as the "new law"). The new law no longer required the
11 registration of viaticals provided the issuer/seller conformed to the filing and disclosure
12 requirements set forth in A.R.S. §44-1850. Additionally, viatical issuers and their agents were no
13 longer required to be registered contingent upon full compliance with A.R.S. §44-1850.¹

14 13. From approximately late-1999 through December 2000, PFINGSTEN offered and sold
15 approximately 12 MBC viaticals to at least 8 known investors. The principal amount of these
16 investments totaled at least \$357,000.00. PFINGSTEN received commissions from MBC (or one
17 of its agents) of least \$36,577.00 for these Arizona sales.

18 14. The RESPONDENT'S viatical sales were not registered as securities nor were they exempt
19 from registration.

20 15. At all times relevant, MBC was not registered as a securities dealer in Arizona and
21 RESPONDENT was not registered as securities salesmen in Arizona nor was he exempt from
22 registration.

23 16. Following the RESPONDENT'S association with MBC in late-1999, RESPONDENT
24 received various MBC marketing materials including promotional brochures. MBC also offered

25 ¹ Effective August 22, 2002, the registration exemption for viatical issuers and sales agents under A.R.S. §44-1850 was
26 eliminated. Offers for sale and sales of viaticals must be through a registered dealer and salesman.

1 to the RESPONDENT suggestions for flyers, direct mail pieces, and advertising. These
2 marketing materials included various claims such as investors could earn fixed returns as high as
3 seventy-two percent (72%) with "no speculation or stock market risk" and that the investors
4 principal and return were "fully secured." The materials further cautioned prospective investors
5 not to "gamble your financial future with high risk investments," and boasted that "this [viaticals]
6 unique opportunity provides consistently higher returns for the serious minded and conservative
7 individuals" who did not wish to risk their underlying principal.

8 17. Based, in part, on the MBC marketing materials, RESPONDENT represented to his clients
9 that investments in viaticals present little to no risk and provide returns that were higher than most
10 other investments. However, the RESPONDENT misrepresented or failed to advise investors
11 about the potential risks of investing in viaticals.

12 18. Contrary to promotional claims, MBC viatical investments actually contain a number of
13 inherent risks including, without limitation, the medical prognoses for viators are susceptible to
14 manipulation and distortion and the detrimental effect on the investors' profits and/or principal
15 should the viator live beyond the life expectancy.

16 **IV.**

17 **VIOLATION OF A.R.S. § 44-1841**

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

19 19. From approximately late-1999 through December 2000, RESPONDENT offered or sold
20 securities in the form of investment contracts, within or from Arizona.

21 20. The securities referred to above were not registered pursuant to the provisions of Articles 6 or
22 7 of the Securities Act nor were they exempt from registration pursuant to Article 4 of the Securities
23 Act.

24 21. This conduct violates A.R.S. § 44-1841.

25 ...

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

22. From approximately late-1999 through December 2000, RESPONDENT offered or sold securities within or from Arizona, while not registered as a dealer or a salesman pursuant to the provisions of Article 9 of the Securities Act or exempt from registration pursuant to Article 4 of the Securities Act.

23. 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)

24. In connection with the offer or sale of securities within or from Arizona, RESPONDENT 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. RESPONDENT'S conduct includes, but is not limited to, the conduct set forth in paragraphs 17 through 19 herein.

25. This conduct violates A.R.S. § 44-1991.

XII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENT:

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

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

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

4. Order that the marital communities of RESPONDENT and RESPONDENT SPOUSE be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

XIII.

HEARING OPPORTUNITY

RESPONDENT, including RESPONDENT SPOUSE, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any RESPONDENT requests a hearing, the RESPONDENT must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

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

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

XIV.

ANSWER REQUIREMENT

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

Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Julie Coleman.

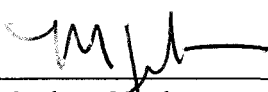
The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each RESPONDENT, RESPONDENT SPOUSE or RESPONDENT's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied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

When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify

1 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or
2 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

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

5 Dated this 1st day of February, 2005.

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9 Matthew Neubert
Director of Securities

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