

8/23/05



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



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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

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

**DATE:** August 3, 2005

**RE:** Tierra Group, Rene L. Couch, Terry Couch, et al. (S-03437A-03-0000); Order of Disgorgement and Order for Administrative Penalties against Respondent Terry Couch

**CC:** Brian C. McNeil, Executive Secretary

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Attached is a proposed Order of Disgorgement and Order for Administrative Penalties ("Order") against Ms. Terry Couch, a respondent spouse who failed to request a hearing in this matter. This proposed Order directly relates to the July 7, 2005 Open Meeting, wherein the Commission entered a final order against all named respondents in this case but for Ms. Couch.

This proposed Order is submitted solely to bind the marital community of Rene L. Couch and Ms. Couch for the restitution and administrative penalty obligations arising from Commission Decision No. 67961. This Decision, entered against Rene L. Couch and several other entities on July 11, 2005, found Rene Couch liable for a variety of registration and securities fraud violations on account on the sale of various limited partnership interests and promissory notes.

Originator: Jamie Palfai

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3 JEFF HATCH-MILLER  
4 Chairman  
5 WILLIAM A. MUNDELL  
6 Commissioner  
7 MARC SPITZER  
8 Commissioner  
9 MIKE GLEASON  
10 Commissioner  
11 KRISTIN K. MAYES  
12 Commissioner  
13

14 **In the matter of:**

15 **TIERRA GROUP, a/k/a TIERRA GROUP**  
16 **PROPERTIES, a/k/a TIERRA GROUP**  
17 **COMPANIES, a/k/a TIERRA GROUP, INC.,**  
18 10105 East Via Linda Drive, Suite 103-330  
19 Scottsdale, Arizona 85258

20 **PRESERVATION TRUST CORPORATION,**  
21 **a/k/a PRESERVATION CORPORATION,**  
22 **a/k/a PRESERVATION TRUST COMPANY,**  
23 10105 East Via Linda Drive, Suite 103-330  
24 Scottsdale, Arizona 85258

25 **PARTNERSHIP PRESERVATION TRUST,**  
26 **a/k/a PARTNERSHIP PRESERVATION**  
27 **CORPORATION LIMITED PARTNERSHIP,**  
28 10105 East Via Linda Drive, Suite 103-330  
29 Scottsdale, Arizona 85258

30 **CATERPILLAR FOUNDATION**  
31 **PROPERTIES, a/k/a CATERPILLAR**  
32 **FOUNDATION PROPERTIES LIMITED**  
33 **PARTNERSHIP,**  
34 10105 East Via Linda Drive, Suite 103-330  
35 Scottsdale, Arizona 85258

36 **RENE L. COUCH, a married man**  
37 10727 East Palm Ridge Drive  
38 Scottsdale, Arizona 85259

39 **TERRY COUCH, a married woman**  
40 10727 East Palm Ridge Drive  
41 Scottsdale, Arizona 85259,

42 Respondents.

DOCKET NO. S-03437A-03-0000

DECISION NO. \_\_\_\_\_

**ORDER OF DISGORGEMENT AND  
ORDER FOR ADMINISTRATIVE  
PENALTIES AGAINST RESPONDENT  
TERRY COUCH**

1 On January 23, 2003, the Securities Division ("Division") of the Arizona Corporation  
2 Commission ("Commission") filed a Notice of Opportunity For Hearing Regarding Proposed Order  
3 to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Other Affirmative  
4 Action ("Notice") against, *inter alia*, Respondent TERRY COUCH ("MS. COUCH"). The Division  
5 made proper service of this Notice on MS. COUCH on January 24, 2003. The Notice specified that  
6 MS. COUCH would be afforded an opportunity for an administrative hearing to contest the  
7 allegations levied in this matter upon filing a written request for hearing with Docket Control of the  
8 Commission within ten days of service of the Notice. MS. COUCH failed to request such a hearing  
9 within the required time.

10 I.

11 **FINDINGS OF FACTS**

12 1. At all relevant times, MS. COUCH was the spouse of Respondent RENE L. COUCH  
13 ("R.L. COUCH"). MS. COUCH is joined in this action under A.R.S. § 44-2031(C) for the purpose  
14 of determining the liability of the marital community.

15 2. MS. COUCH was served on January 24, 2003 at the place of her residence at the  
16 time, 3850 East Thunderhill Place, Phoenix, Arizona, 85044. Service of this Notice was made by  
17 hand-delivery to Reg Couch, father-in-law to MS. COUCH and an individual duly authorized to  
18 accept service on her behalf.

19 3. MS. COUCH did not request a hearing in this matter.

20 4. On July 11, 2005, the Commission entered an Order against MS. COUCH's spouse,  
21 R.L. COUCH, finding that R.L. COUCH offered or sold securities within or from Arizona within  
22 the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26), violated A.R.S. § 44-1841  
23 by offering or selling securities that were neither registered nor exempt from registration, violated  
24 A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen  
25 nor exempt from registration, and violated A.R.S. § 44-1991 by (a) employing a device, scheme or  
26 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and/or

1 (c) engaging in transactions, practices or courses of business which operate or would operate as a  
2 fraud or deceit upon investors.

3 5. Based on this conduct, the Commission ordered that R.L. COUCH pay restitution in  
4 the amount of \$549,085, and ordered that R.L. COUCH pay an administrative penalty in the amount  
5 of \$25,000.

6 6. This Order was recorded by the Commission under Decision No. 67961.

7 **II.**

8 **CONCLUSIONS OF LAW**

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

11 2. R.L. COUCH's conduct in this matter binds the marital community of R.L.  
12 COUCH and MS. COUCH to any resulting financial liabilities pursuant to A.R.S. § 25-214.

13 **III.**

14 **ORDER**

15 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the  
16 Commission finds that the following relief is appropriate, in the public interest, and necessary for  
17 the protection of investors:

18 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that MS. COUCH shall, jointly and  
19 severally with all respondents identified under Commission Decision No. 67961, and for the  
20 purpose of her marital community only, make a disgorgement payment to investors as reflected in  
21 the records of the Commission in the amount of **\$549,085** plus interest at the rate of 10% per  
22 annum from the entry date of this Order. The full disgorgement amount is due and payable on the  
23 entry date of this Order; payment shall be made by cashier's check or money order payable to the  
24 "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the  
25 Arizona Attorney General. The Arizona Attorney General shall disburse disgorgement funds to  
26

1 both partnership investors and promissory note investors as reflected in the records of the  
2 Commission; disbursements to eligible investors shall be made via a *pro rata* distribution based on  
3 the *original* amount(s) of funds invested into one or more of the various investment programs  
4 referenced above.

5       IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036, that MS. COUCH shall,  
6 jointly and severally with all respondents identified under Commission Decision No. 67961, and  
7 for the purpose of her marital community only, pay - by cashier's check or money order - an  
8 administrative penalty in the amount of **\$25,000**. This payment obligation, payable to the "State of  
9 Arizona," shall be subordinated to any disgorgement obligations ordered herein, and shall become  
10 immediately due and payable only after all disgorgement payments have been paid in full or,  
11 alternatively, if MS. COUCH has defaulted prior to fulfilling his disgorgement obligations. Any  
12 outstanding administrative penalties shall accrue interest at the rate of 10% per annum until paid in  
13 full. This administrative penalty shall be reduced in half to **\$12,500** if and only if the disgorgement  
14 balance as outlined above has been satisfied in full.

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1 IT IS FURTHER ORDERED that if MS. COUCH does not comply with the required  
2 disgorgement and administrative penalty payments as set forth herein, any and all outstanding  
3 balances may be deemed in default and shall be immediately due and payable without notice or  
4 demand.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
7

8  
9 \_\_\_\_\_  
CHAIRMAN

COMMISSIONER

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11 \_\_\_\_\_  
COMMISSIONER

COMMISSIONER

COMMISSIONER

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14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
15 Executive Director of the Arizona Corporation  
16 Commission, have hereunto set my hand and  
17 caused the official seal of the Commission to be  
18 affixed at the Capitol, in the City of Phoenix, this  
19 \_\_\_\_\_ day of \_\_\_\_\_, 2005.

20 \_\_\_\_\_  
BRIAN C. McNEIL  
Executive Director

21 \_\_\_\_\_  
DISSENT

22 \_\_\_\_\_  
23 DISSENT

24 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant  
25 to the Executive Director, voice phone number 602-542-3931, E-mail [lhogan@cc.state.az.us](mailto:lhogan@cc.state.az.us).

26 (JP)