

CARL J. KUNASEK
CHAIRMAN

JIM IRVIN
COMMISSIONER

WILLIAM A. MUNDELL
COMMISSIONER



ORIGINAL

BRIAN C. McNEIL
EXECUTIVE SECRETARY

MARK SENDROW



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ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL
MEMORANDUM

Arizona Corporation Commission
DOCKETED

APR 12 2000

DOCKETED BY	
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TO: Chairman Carl J. Kunasek
Commissioner Jim Irvin
Commissioner William A. Mundell

FROM: Mark Sendrow *MS*
Director of Securities

DATE: April 12, 2000

RE: Proposed Order For Relief And Consent To Same Re: Susan Marie Wuest,
Docket No. S-03383A-99-0000

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order To Cease And Desist And Consent To Same ("Order") executed by Respondent Susan Marie Wuest ("Wuest"). The Order finds that Wuest violated A.R.S. § 44-1991 by converting and misappropriating BG Associates, Inc. ("BGA") funds, and funds belonging to BGA'S clients. The Order also revokes Wuest's registration as a salesperson in Arizona and imposes a \$10,000 penalty.

BGA is an investment adviser firm and branch office of Broker/Dealer United Planners' Financial Services of America, a Limited Partnership ("UPFS"). Wuest was registered as a securities representative with UPFS from September 1988 until May 1999. While registered with UPFS, Wuest worked at BGA in the capacity of administrative staff. Although she was registered as a securities representative, she did not have any clients and she never earned commissions. Wuest has not registered with another Broker/Dealer since UPFS.

From about June 1994 to May 1999, Wuest converted and misappropriated funds belonging to BGA and BGA'S investment advisory clients in the amount of approximately \$255,812. Wuest's conversions and misappropriations affected fifteen different clients of BGA.

Some of the ways Wuest converted and misappropriated funds from BGA and its clients were by forging checks on the account of BGA, by withdrawing money from BGA'S bank account, by obtaining and using a credit card in her name on the account of BGA, by receiving redemption proceeds from customers' accounts, by diverting clients' funds to herself and by creating and altering documents without authorization.

On September 7, 1999, Wuest entered into a settlement agreement with BGA. She agreed to pay certain sums of money to BGA along with the net proceeds from the sale of assets such as her house. To date, Wuest has paid \$282,725 to BGA. Of this amount, \$30,075 was reimbursement for accounting, legal and bank expenses incurred by BGA to investigate and settle these matters with Wuest. BGA has reimbursed all of its clients for their losses caused by Wuest. BGA considers this matter fully and finally settled and seeks no additional recovery from Wuest.

The Division believes the Order adequately addresses Wuest's conduct and serves the public interest by imposing a penalty and revoking Wuest's Arizona registration. The Division respectfully recommends approval of this proposed Order.

Originator: Anthony Bingham

A.G. Assigned: Robert Zumoff

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
Chairman
3 JIM IRVIN
Commissioner
4 WILLIAM A. MUNDELL
Commissioner

5 In the matter of)

6 SUSAN MARIE WUEST)
7 2303 E. Evergreen)
8 Mesa, Arizona 85213)
9 CRD# 1395441)

DOCKET NO. S-03383A-99-0000

DECISION NO. _____

**ORDER FOR RELIEF AND
CONSENT TO SAME**

Respondent.

10 **I.**

11 **INTRODUCTION**

12 SUSAN MARIE WUEST ("WUEST"), elects to permanently waive her right to a hearing and
13 appeal under Articles 11 and 12 of the Securities Act of Arizona (the "Act") with respect to this Order for
14 Relief and Consent to Same ("Order"); admits the jurisdiction of the Arizona Corporation Commission
15 ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this
16 Order; and consents to entry of this Order by the Commission.

17 **II.**

18 **FINDINGS OF FACT**

- 19 1. WUEST'S last known address is 2303 E. Evergreen, Mesa, Arizona 85213.
- 20 2. From September 1988 until May 1999, WUEST was registered as a securities
21 representative with United Planners' Financial Services of America, a Limited Partnership ("UPFS").
- 22 3. While WUEST was registered with UPFS, she served in the capacity of administrative
23 staff at BGA Associates, Inc. ("BGA"), a branch location. WUEST was paid a salary. She never had
24 any clients or earned any commissions.
- 25 4. On April 22, 1999, WUEST resigned from UPFS. UPFS subsequently filed a U-5 form.
26 WUEST has not registered with another Broker/Dealer since her resignation from UPFS.

1 5. From about June 1994 to May 1999, WUEST converted and misappropriated funds
2 belonging to BGA and BGA'S investment advisory clients in the amount of approximately
3 \$255,812. WUEST'S conversions and misappropriations affected fifteen different clients.

4 6. WUEST converted and misappropriated funds of BGA by forging checks written on
5 BGA'S bank account and credit line; by withdrawing money without authorization from BGA'S
6 bank account; by obtaining and using without authorization a credit card in her name on the account
7 of BGA; by creating and altering without authorization BGA'S trade reports; by creating and altering
8 without authorization documentation of buy and sell transactions in securities and annuities; and by
9 other unauthorized practices. Most of the forged checks, unauthorized withdrawals and credit card
10 purchases on BGA'S accounts were for the benefit of WUEST.

11 7. WUEST converted and misappropriated funds of BGA'S clients by receiving
12 redemption proceeds from customer accounts; by diverting clients' funds to herself; by diverting
13 funds among BGA client accounts in an effort to cover up earlier unauthorized transactions by her;
14 by creating and altering without authorization documentation of buy and sell transactions in
15 securities and annuities; by creating and altering without authorization portfolio account statements;
16 by forging account documents, redemption letters, correspondence, tax returns and other documents
17 in the name of BGA and its clients; and by other unauthorized practices.

18 8. BGA has reimbursed all of its clients for their losses caused by WUEST. On
19 September 7, 1999, WUEST entered into a settlement agreement with BGA. At the time of
20 execution of the settlement agreement, WUEST paid BGA \$180,000 with the majority of these funds
21 being provided by her family. WUEST had previously paid BGA \$30,000 for restitution to its
22 clients. As part of the settlement process, WUEST provided BGA information that it had not
23 discovered regarding additional clients from whom she had converted and misappropriated funds.

24 9. As part of the settlement agreement, WUEST agreed to distribute her pension
25 plan/401(K) account to BGA, sell her house and distribute the net proceeds to BGA, pay BGA the
26 \$5,000 proceeds of an insurance policy for her deceased husband and pay BGA proceeds from the

1 sale of some personal property. BGA has received all funds owed it pursuant to the settlement
2 agreement. The net proceeds from the sale of WUEST'S home were \$45,830. The pension
3 plan/401(K) proceeds paid to BGA were \$21,375 and WUEST paid BGA \$520 from the sale of her
4 personal property. In total, WUEST has paid \$282,725 to BGA. Of the \$282,725 paid to BGA,
5 \$30,075 was for accounting, legal and bank expenses incurred to investigate and settle this matter.
6 BGA considers this matter fully and finally settled and seeks no additional recovery from WUEST.

7 III.

8 CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction over this matter pursuant to the Act, A.R.S. §44-1801
10 *et seq.*, and Article XV of the Arizona Constitution.

11 2. In connection with a transaction or transactions within or from Arizona involving a
12 sale or purchase of securities, WUEST directly or indirectly: (i) employed a device, scheme or
13 artifice to defraud; (ii) made untrue statements of material fact, or omitted to state material facts
14 necessary in order to make the statements made, not misleading in light of the circumstances under
15 which they were made; and (iii) engaged in transactions, practices or courses of business which
16 operated or would operate as a fraud or deceit. WUEST'S conduct includes but is not limited to, the
17 following acts which constitute violations of A.R.S. § 44-1991:

- 18 a) converting and misappropriating BGA funds and funds of BGA clients;
- 19 b) forging checks written on the bank account and credit line of BGA;
- 20 c) creating and altering without authorization documentation of buy and sell
21 transactions in securities and annuities;
- 22 d) creating and altering without authorization portfolio account statements;
- 23 e) forging account documents, redemption letters, correspondence, tax returns
24 and other documents.

25 3. WUEST'S conduct described above is grounds for revocation of her Arizona
26 registration, pursuant to A.R.S. § 44-1962(9).

IV.

ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following Order is appropriate, in the public interest and necessary for the protection of investors.

1. IT IS ORDERED, pursuant to A.R.S. §44-2032, that WUEST CEASE and DESIST from violations of the Act.

2. IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962(9), that WUEST'S registration as a salesperson is revoked.

3. IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that WUEST shall pay an administrative penalty of \$10,000 by cashier's check made payable to the "Arizona State Treasurer" for deposit in the State General Fund, due and payable upon the effective date set forth below.

4. IT IS FURTHER ORDERED, that if the administrative penalty is not paid in full on the effective date set forth below, then interest will accrue at the statutory rate of ten percent per annum from the effective date forward.

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1 5. IT IS FURTHER ORDERED, that this decision shall become effective immediately
2 upon the date set forth below.

3
4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, Brian C. McNeil, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of
13 Phoenix, this ____ day of _____, 2000.

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18 _____
19 BRIAN C. McNEIL
20 Executive Secretary

21
22 _____
23 DISSENT

24 (ABB)

25 This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA
26 Coordinator, voice phone number 602/542-0838, E-mail csandoval@cc.state.az.us.

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CONSENT BY SUSAN MARIE WUEST TO ENTRY OF AN ORDER
BY THE CORPORATION COMMISSION AND WAIVER OF HEARING

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3
4 1. Respondent, Susan Marie Wuest ("WUEST"), admits the jurisdiction of the Arizona
5 Corporation Commission ("Commission") over the subject matter of this proceeding, and
6 acknowledges that she has been fully advised of her right to a hearing to present evidence and call
7 witnesses. WUEST knowingly and voluntarily waives all rights to a hearing before the Commission
8 and all other procedures otherwise available under Article 11 of the Securities Act of Arizona (the
9 "Act"), Chapter 12 of Title 44 of the Arizona Revised Statutes, and Title 14 of the Arizona
10 Administrative Code. WUEST acknowledges that the accompanying Order for Relief and Consent to
11 Same ("Order") constitutes a valid final order duly rendered by the Commission.

12 2. WUEST knowingly and voluntarily waives any right she may have under Article 12 of
13 the Act to judicial review by any court by way of suit, appeal or extraordinary relief resulting from the
14 entry of this Order.

15 3. WUEST acknowledges and agrees that this Order is entered into freely and voluntarily
16 and that no promise was made or coercion used to induce WUEST to enter into it.

17 4. WUEST acknowledges that she has been represented by counsel in this matter and that
18 she has reviewed this Order with her attorney and understands all terms and obligations contained
19 herein.

20 5. WUEST neither admits nor denies the Findings of Fact and Conclusions of Law
21 contained in the Order. WUEST agrees that she shall not challenge their validity in any present or
22 future administrative proceedings before the Commission or any other state agency concerning the
23 denial or issuance of any licenses or registration required by the State in order to engage in the practice
24 of any business or profession.

25 6. WUEST consents to the entry of this Order and agrees to be fully bound by its terms
26 and conditions. WUEST further acknowledges that should she fail to comply with any and all

1 provisions of this Order, the Commission may enforce the Order in Superior Court pursuant to A.R.S.
2 § 44-2036(C), or impose additional sanctions and costs and seek other appropriate relief subject to
3 WUEST'S right to a hearing pursuant to the Act.

4 7. WUEST further understands that default will render her liable to the Commission for
5 its costs of collection and interest at the maximum legal rate.

6 8. WUEST agrees that as a part of the settlement reached herein, she will not apply for
7 registration as a securities dealer or salesperson, or for licensure as an investment adviser or
8 investment adviser representative, under the Securities Act of Arizona or the Investment Management
9 Act of Arizona, at any time in the future.

10 9. WUEST acknowledges that this Order resolves only alleged administrative violations
11 of the Act and that nothing contained in the Order purports to resolve any other issues which may exist
12 between WUEST and the State. Nothing in the Order shall be construed to restrict or preclude any
13 other agency or officer of the State of Arizona or its subdivisions from initiating other civil,
14 administrative or criminal proceedings against WUEST, now or in the future. Nothing in the Order
15 shall be construed to restrict the State's right in a future proceeding to bring an action against WUEST
16 from or related to facts not set forth in the Order.

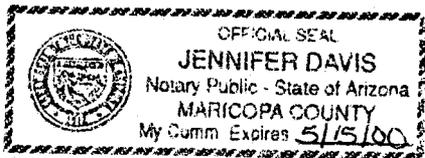
17 10. WUEST acknowledges that she has been informed and understands that the
18 Commission or its designee, at the Commission's sole and exclusive discretion, may refer or grant
19 access to this matter, or any information or evidence gathered in connection with this matter, to any
20 person or entity having appropriate administrative, civil or criminal jurisdiction. WUEST
21 acknowledges that no representations regarding the above have been made so as to induce her to enter
22 into this Order, including the fact that no promise or representation has been made by the Commission

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1 or its designee or staff with regard to any potential criminal liability or immunity from any potential
2 criminal liability.

3
4 Susan Marie Wuest
5 SUSAN MARIE WUEST

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8 SUBSCRIBED TO AND SWORN BEFORE me this 11th day of April,
9 2000, by SUSAN MARIE WUEST.



12 Jennifer Davis
13 NOTARY PUBLIC

14 My Commission Expires: 5/15/2000