

CARL J. KUNASEK
CHAIRMAN

JIM IRVIN
COMMISSIONER

WILLIAM A. MUNDELL
COMMISSIONER

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
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MEMORANDUM

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

Arizona Corporation Commission
DOCKETED
JUL 05 2000

FROM: Mark Sendrow *MS*
Director of Securities

DATE: July 5, 2000

RE: Proposed Order to Cease and Desist and Consent To Same for Tucson Estate
Financial Advisors and James L. Kinion II, S-03389A-00-0000

CC: Brian C. McNeil, Executive Secretary

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Attached is a proposed Order to Cease and Desist and Consent To Same ("Order") for Tucson Estate Financial Advisors and James L. Kinion II (collectively "Respondents"). The Order requires Respondents to cease and desist their activity, to pay restitution to all investors and to pay a penalty of \$10,000.

James Kinion is a Tucson based insurance agent. He is president of Tucson Estate Financial Advisors. The Order finds that Respondents sold 41 promissory notes to 16 Arizona investors, all of whom had a prior business relationship with Respondents, for a total investment of approximately \$1,176,084.62. The money raised from the sale of the promissory notes went to third parties. Respondents contracted to receive commissions ranging from nine to thirteen percent, totaling \$109,121.71. However, \$5041.48 was not paid to them, leaving total paid commissions to Respondents of \$104,080.23.

The promissory notes were on behalf of nine different companies, all of whom were located out of state. All notes were for a nine-month period. Interest on the notes ranged from ten to thirteen percent. As of this date, some of the notes have been paid off, but the majority are past due. Thus, the majority of the investors have not received a return of their principal from their investments with the companies. The notes were allegedly guaranteed by an insurance company bond. However, to date no investor has received any payment from any insurance bond, although the notes are past due.

The Order finds that Respondents did not inform investors that the promissory notes were not registered as securities in Arizona or exempt from registration, failed to fully disclose the

financial incentives of up to thirteen percent commissions that they received for selling the promissory notes and failed to provide full disclosure regarding the investment including risk, disclosure statements, prospectuses or financial statements. Additionally, the Order finds that Respondents failed to discover and inform investors that some of the companies issuing the promissory notes had cease and desist orders against them from other states.

The Order requires Respondents to cease and desist from violations of the Securities Act. It orders Respondents and the community of James and Vicki Kinion jointly and severally to make monetary restitution in the amount of \$104,080.23 and pay a penalty of \$10,000 to the State, with interest accruing at ten percent per annum on any amounts due. The restitution is the amount of commissions that Respondents received from the sale of the notes.

The Division recommends approval of the Order. Respondents are required to disgorge all commissions they made from the sale of the notes, in addition to payment of a \$10,000 penalty. If Respondents do not pay, the Order allows the State to attempt to collect against all assets of Respondents, including all of Kinion's community property, not just his separate property.

Originator: Mark Dinell

A.G. Assigned: Robert Zumoff

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 CARL J. KUNASEK
4 Chairman
5 JIM IRVIN
6 Commissioner
7 WILLIAM A. MUNDELL
8 Commissioner

6 In the matter of)
7 TUCSON ESTATE FINANCIAL ADVISORS,)
8 INC.,)
9 an Arizona corporation)
10 3049-A S. Kinney Road)
11 Tucson, Arizona 85713)
12 JAMES R. KINION, II)
13 6655 N. Canyon Crest Drive, #7139)
14 Tucson, Arizona 85750,)
15 Respondents.)

DOCKET NO. S-03389A-00-0000

DECISION NO. _____

**ORDER TO CEASE & DESIST and
CONSENT TO SAME**

13 **I.**

14 **INTRODUCTION.**

15 Respondents TUCSON ESTATE FINANCIAL ADVISORS, INC (“TEFA”) and JAMES R.
16 KINION (collectively “RESPONDENTS”) elect to permanently waive their right to a hearing and appeal
17 under Articles 11 and 12 of the Securities Act of Arizona (“the Act”) with respect to this Order to Cease
18 and Desist (Order); admit the jurisdiction of the Arizona Corporation Commission (Commission); neither
19 admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to
20 entry of this Order by the Commission.
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2 **II.**

3 **FINDINGS OF FACT**

4 1. TUCSON ESTATE FINANCIAL ADVISORS, INC. is an Arizona corporation located at
5 3049-A S. Kinney Road, Tucson, Arizona 85713.

6 2. JAMES R. KINION, II, whose last known address is 6655 N. Canyon Crest Drive,
7 #7139, Tucson, Arizona 85750, is the president of TEFA.

8 3. At all relevant times, JAMES KINION has been married to VICKI L. KINION, whose
9 last known address is 6655 N. Canyon Crest Drive, #7139, Tucson, Arizona 85750. All of his actions
10 have been in furtherance of the KINION marital community. VICKI L. KINION was not a Respondent
11 in the Notice of Opportunity in this action filed on March 28, 2000, but acknowledges that all actions of
12 JAMES KINION, as outlined here, have been in furtherance of the KINION marital community.
13

14 4. JAMES KINION is licensed in Arizona to sell insurance and real estate.

15 5. In or about April 1998, JAMES KINION received a mailing from Robert Ryan and Dan
16 Bennett. Ryan informed JAMES KINION that, among other things, his company was in the business of
17 selling promissory notes for various companies. Ryan further informed JAMES KINION that any
18 promissory notes sold through his company would be fully insured by independent bonding companies.
19 Beginning in or about June 1998, TEFA and JAMES KINION offered to sell securities, in the form of
20 promissory notes or investment contracts to Arizona investors, on behalf of the following corporations:
21

- 22 a) Apogenics, Inc.
23 b) Caffe Diva Group Ltd. ("Caffe Diva")
24 c) Corlogic Corp.
25 d) Digizap Technologies LLC
26

- e) Pacific Air Transport, Inc. ("Pacific Air")
- f) Redbank Petroleum, Inc. ("Redbank")
- g) Sebastian International Entertainment, Inc. ("Sebastian")
- h) Technical Support Services, Inc. ("TSSI")
- i) World Vision Entertainment, Inc. ("World Vision")

6. TEFA and JAMES KINION sold 41 promissory notes for the above companies to 16 Arizona investors, all of whom had a prior business relationship with KINION, for a total investment of approximately \$1,176,084.62. TEFA and JAMES KINION contracted to receive commissions ranging from nine to thirteen percent, totaling approximately \$109,121.71. However, \$5041.48 was not paid them, leaving total paid commissions of \$104,080.23.

7. All notes were for a nine-month period. Interest on the notes ranged from ten percent to thirteen percent. As of this date, some of the notes have been paid off, but the majority are past due. Thus, the majority of the investors have not received a return of their principal from their investments with the companies.

8. The notes were allegedly guaranteed by an insurance company bond. JAMES KINION told the investors that he received assurances that the bond guaranteeing any specific that the note would be paid off if the company did not make the required payment and that the notes were safe and fully bonded. However, to date no investor has received any payment from any insurance bond, even though the notes are past due. The insurance companies backing the notes from the nine companies were Global Insurance Company, Ltd., located in Costa Rica and New England International Surety Inc. ("NEISI"), located in Belgium. There is currently litigation against NEISI to seek to enforce the bonds.

1 9. TEFA and JAMES KINION did not inform investors that the promissory notes were
2 not registered as securities in Arizona or exempt from registration, failed to fully disclose the financial
3 incentives of up to thirteen percent commissions that they received for selling the promissory notes
4 and failed to provide full disclosure regarding the investment including risk, disclosure statements,
5 prospectuses or financial statements.

6 10. TEFA and JAMES KINION were not aware and did not inform the investors in
7 Redbank that at the time of their investment, the president of Redbank was the subject of a cease and
8 desist order issued by the State of Maryland for securities fraud and was under order to repay
9 approximately \$2,000,000 to Maryland investors.
10

11 11. TEFA and JAMES KINION were not aware and did not inform the investors in
12 Sebastian that prior to their investment, the State of Pennsylvania had issued a cease and desist order
13 against Sebastian ordering it to stop the offer and sale of unregistered securities.

14 12. TEFA and JAMES KINION were not aware and did not inform the investors in World
15 Vision that prior to their investment, the Commonwealth of Pennsylvania had issued a cease and desist
16 order against World Vision ordering it to stop the offer and sale of unregistered securities.
17

18 III.

19 CONCLUSIONS OF LAW

20 1. The Commission has jurisdiction over matters relating to securities pursuant to Article
21 XV of the Arizona Constitution and the Act, A.R.S. § 44-1801 *et seq.*

22 2. The securities were not registered under A.R.S. §§ 44-1871 through 44-1875 or 44-1891
23 through 44-1901; were not exempt from registration under A.R.S. §§ 44-1843 or 44-1843.01; were not
24 offered or sold in exempt transactions under A.R.S. § 44-1844; and were not securities exempt under any
25 rule or order promulgated by the Commission. This conduct violates A.R.S. § 44-1841.
26

1 3. In connection with the offers to sell and the sale of securities, TEFA and JAMES
2 KINION acted as dealers and/or salesmen within and/or from Arizona, although not registered pursuant
3 to the provisions of Article 9 of the Securities Act, in violation of A.R.S. § 44-1842.

4 4. In connection with the offers and sales of securities within and/or from Arizona, TEFA
5 and JAMES KINION made untrue statements of material fact or omitted to state material facts which
6 were necessary in order to make the statements made not misleading in light of the circumstances under
7 which they were made, in violation of A.R.S. § 44-1991. TEFA and JAMES KINION'S conduct
8 includes, but is not limited to, the following:
9

- 10 a) Failing to discover and inform investors that the promissory notes were not registered as
11 securities in Arizona and were not exempt from registration;
- 12 b) Failing to fully disclose the financial incentives of up to thirteen percent commissions that
13 they received for selling the promissory notes;
- 14 c) Failing to discover and provide full disclosure regarding the investment including risk,
15 disclosure statements, prospectuses or financial statements;
- 16 d) Failing to discover and inform the Redbank investors that at the time of their investment,
17 the president of Redbank was the subject of a cease and desist order issued by the State of
18 Maryland for securities fraud and was under order to repay approximately \$2,000,000 to
19 Maryland investors;
- 20 e) Failing to discover and inform the Sebastian investors that at the time of their investment,
21 Sebastian was the subject of a cease and desist order issued by the State of Pennsylvania;
22
23 and
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1 f) Failing to discover and inform the World Vision investors that at the time of their
2 investment, World Vision was the subject of a cease and desist order issued by the State of
3 Pennsylvania.

4 **IV.**

5 **ORDER**

6 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission
7 finds that the following Order is appropriate, in the public interest and necessary for the protection of
8 investors.
9

10 IT IS ORDERED, pursuant to A.R.S. § 44-2032, TEFA and JAMES KINION shall Cease and
11 Desist from violations of the Act.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and the
13 community of JAMES and VICKI KINION jointly and severally shall make monetary restitution in
14 the amount of \$104,080.23 as set forth in the records obtained by the Securities Division.

15 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, RESPONDENTS shall jointly
16 and severally pay an administrative penalty in the amount of \$10,000, payable to the Treasurer of the
17 State of Arizona for deposit into its general fund, due and payable after all restitution payments
18 required by this Order have been made.
19

20 IT IS FURTHER ORDERED that RESPONDENTS shall pay interest on all unpaid amounts of
21 restitution accruing from the date of entry of the Order, at the statutory rate of ten percent per annum
22 pursuant to A.A.C. R14-4-308, until the amounts are paid in full.
23

24 IT IS FURTHER ORDERED that restitution funds shall be deposited in an interest bearing
25 account through the office of Arizona Attorney General for the benefit of investors. The Attorney
26 General shall disburse the available funds on a pro rata basis to investors as reflected in the records of

1 the Securities Division. If any disbursement check issued by the Attorney General either is not
2 deliverable or has not cleared the trust account within 120 days of the date of issuance, the funds
3 related to such check shall be redistributed to the known investors. If all investors are paid in full,
4 including interest, any returned funds shall revert to the State of Arizona payable to the Treasurer.

5 IT IS FURTHER ORDERED that this Order shall become effective immediately upon the date
6 set forth below.

7
8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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11 CHAIRMAN

COMMISSIONER

COMMISSIONER

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

17
18 _____
19 BRIAN C. McNEIL
20 Executive Secretary

21
22 _____
23 DISSENT
24 (MD)

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 TO ENTRY OF ORDER BY THE COMMISSION
AND WAIVER OF HEARING**

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3 1. TUCSON ESTATE FINANCIAL ADVISORS and JAMES R. KINION (collectively
4 “RESPONDENTS”) and VICKI L. KINION admit the jurisdiction of the Arizona Corporation
5 Commission (“Commission”) over the subject matter of this proceeding, and acknowledge that they
6 have been fully advised of their right to a hearing to present evidence and call witnesses.
7
8 RESPONDENTS knowingly and voluntarily waive all rights to a hearing before the Commission and
9 all other procedures otherwise available under Article 11 of the Securities Act of Arizona (the “Act”)
10 and Title 14, The Arizona Administrative Code. RESPONDENTS acknowledge that the accompanying
11 Order to Cease and Desist and Consent to Sameo (“Order”) constitutes a valid final order duly rendered
12 by the Commission.

13
14 2. RESPONDENTS and VICKI KINION knowingly and voluntarily waive any right they
15 may have under Article 12 of the Act to judicial review by any court by way of suit, appeal or
16 extraordinary relief resulting from the entry of this Order.

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18 3. RESPONDENTS and VICKI KINION acknowledge and agree that this Order is entered
19 into freely and voluntarily and that no promise was made or coercion used to induce them to enter into
20 it.

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22 4. RESPONDENTS and VICKI KINION acknowledge that they have been represented by
23 counsel in this matter.

24
25 5. RESPONDENTS and VICKI KINION neither admit nor deny admit the findings of fact
26 and conclusions of law and consent to the entry of the Order. RESPONDENTS and VICKI KINION
consent to entry of this Order.

1 6. RESPONDENTS acknowledge that this Order resolves only administrative violations of
2 the Act and that nothing contained in the Order purports to resolve any other issues that may exist between
3 RESPONDENTS and the State. Nothing in the Order shall be construed to restrict or preclude any other
4 agency or officer of the State of Arizona or its subdivisions from initiating other civil or criminal
5 proceedings against RESPONDENTS, now or in the future, that may be related to the matter addressed by
6 the Order and the Consent. Nothing in the Order shall be construed to restrict the State's right in a future
7 proceeding to bring an action against RESPONDENTS from or related to facts not set forth in the Order.
8 Nothing in the Order shall be construed to restrict RESPONDENTS' right to petition the State for
9 reconsideration of this Order in the event that additional funds are received from the promissory notes
10 issued by the various companies or payments from the bonding companies, and those funds are returned to
11 the investors.
12

13 7. RESPONDENTS acknowledge that they have been informed and understand that the
14 Commission or its designee, at the Commission's sole and exclusive discretion, may refer or grant access
15 to this matter, or any information or evidence gathered in connection with this matter, to any person or
16 entity having appropriate administrative, civil or criminal jurisdiction. RESPONDENTS acknowledge
17 that no representations regarding the above have been made so as to induce them to enter into this Order,
18 including the fact that no promise or representation has been made by the Commission or its designee or
19 staff with regard to any potential criminal liability or immunity from any potential criminal liability.
20

21 8. RESPONDENTS understand that it is the Commission's policy not to permit a Respondent
22 to settle an action by consenting to an order that imposes a sanction while denying the allegations in the
23 Notice. RESPONDENTS further understand that the Commission's acceptance of a settlement in this
24 matter is based upon compliance with this policy by RESPONDENTS in any statements concerning this
25
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1 proceeding. If RESPONDENTS breach this agreement, the Commission may move to vacate this Order
2 and restore this case to its active docket.

3 9. JAMES KINION represents that he is authorized to execute this Consent on behalf of
4 TUCSON ESTATE FINANCIAL ADVISORS, INC.

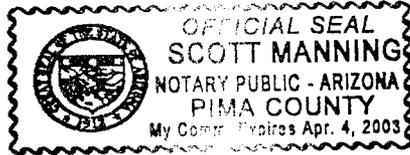
5 10. JAMES KINION and VICKI KINION acknowledge that any restitution, fines or
6 penalties imposed by this Order are community in nature.
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James Kinion II
JAMES R. KINION, II

SUBSCRIBED TO AND SWORN BEFORE me this 27th day of JUNE, 2000,

by James R. Kinion, II



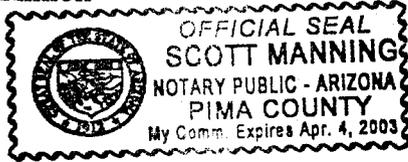
Scott Manning
NOTARY PUBLIC

My Commission Expires: 04 APRIL, 2003

Vicki L. Kinion
VICKI L. KINION

SUBSCRIBED TO AND SWORN BEFORE me this 27th day of JUNE, 2000,

by Vicki L. Kinion



Scott Manning
NOTARY PUBLIC

My Commission Expires: 04 APRIL, 2003

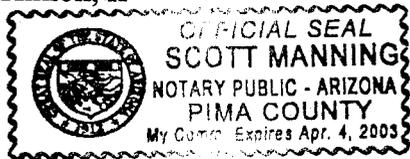
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TUCSON ESTATE FINANCIAL ADVISORS, INC.

James Kinion II
JAMES R. KINION, II

SUBSCRIBED TO AND SWORN BEFORE me this 27th day of JUNE, 2000,

by James R. Kinion, II



Scott Manning
NOTARY PUBLIC

My Commission Expires: 04 APRIL, 2003

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