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Memorandum

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DATE: March 29, 2000

2000 MAR 29 P 2:01

TO: Nancy Cole
Docket Control

AZ CORP COMMISSION
DOCUMENT CONTROL

NEW

FROM: Mark Dinell
Securities Division

RE: Tucson Estate Financial Advisors
Docket No. S-03389A-00-0000
Internal Routing Distribution

CC: Betty Camargo

This is to notify you that the following individuals should be copied on all docketed items for the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert
- Amy Leeson

Mark Dinell (Staff Attorney)

Rick Prendergast (Staff Investigator)

Note: The Assistant Attorney General assigned to this matter is: N/A.

Thank you for your cooperation in this matter.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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NEW

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

AZ CORP COMMISSION
DOCUMENT CONTROL

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

DOCKET NO. S-03389A-00-0000

NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER FOR RELIEF

13 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

14 For its proposed order for relief, the Securities Division (the "Division") of the Arizona
15 Corporation Commission (the "Commission") alleges that respondents, singularly and in concert, have
16 engaged in acts, practices and transactions, which constitute violations of A.R.S. § 44-1801 *et seq.*, the
17 Securities Act of Arizona (the "Securities Act").

18 The Division alleges as follows:

19 **I.**

20 **JURISDICTION**

21 1. The Commission has jurisdiction over these matters pursuant to Article XV of the
22 Arizona Constitution and the Securities Act.

23 ..

24 ..

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II.

RESPONDENTS

1
2
3 2. TUCSON ESTATE FINANCIAL ADVISORS, INC. ("TEFA") is an Arizona corporation
4 located at 3049-A S. Kinney Road, Tucson, Arizona 85713.

5 3. JAMES R. KINION, II ("KINION"), whose last known address is 6655 N. Canyon Crest
6 Drive, #7139, Tucson, Arizona 85750, is the president of TEFA.

7 4. The respondents may be collectively referred to as "RESPONDENTS."
8

III.

FACTS

9
10
11 5. Each of the preceding paragraphs is incorporated by reference.

12 6. RESPONDENTS have engaged in the offer or sale within or from Arizona of securities in
13 the form of promissory notes or investment contracts to the general public.

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

15 8. Beginning in or about June 1998, RESPONDENTS offered to sell securities, in the form
16 of promissory notes or investment contracts to Arizona investors, on behalf of the following
17 corporations:
18

- 19 a) Apogenics, Inc.
20 b) Caffe Diva Group Ltd. ("Caffe Diva")
21 c) Corlogic Corp.
22 d) Digizap Technologies LLC
23 e) Pacific Air Transport, Inc. ("Pacific Air")
24 f) Redbank Petroleum, Inc. ("Redbank")
25 g) Sebastian International Entertainment, Inc. ("Sebastian")
26

1 h) Technical Support Services, Inc. ("TSSI")

2 i) World Vision Entertainment, Inc. ("World Vision")

3 9. RESPONDENTS sold 41 promissory notes for the above companies to 16 Arizona
4 investors, for a total investment of approximately \$1,176,084.62. RESPONDENTS received
5 commissions ranging from nine to thirteen percent, totaling approximately \$109,121.71.

6 10. All notes were for a nine-month period. Interest on the notes ranged from ten percent to
7 thirteen percent. As of this date, some of the notes have been paid off, but the majority are past due.
8 Thus, the majority of the investors have not received a return of their principal from their investments
9 with the companies.
10

11 11. The notes were allegedly guaranteed by an insurance company bond. Investors were
12 told that the bond guaranteed that the note would be paid off if the company did not make the required
13 payment. Investors were told that the notes were safe and fully bonded. However, to date no investor
14 has received any payment from any insurance bond, even though the notes are past due. The insurance
15 companies backing the notes from the nine companies were Global Insurance Company, Ltd., located
16 in Costa Rica and New England International Surety Inc. ("NEISI"), located in Belgium.
17

18 12. RESPONDENTS did not inform investors that the promissory notes were not registered
19 as securities in Arizona or exempt from registration, failed to fully disclose the financial incentives of
20 up to thirteen percent commissions that they received for selling the promissory notes and failed to
21 provide full disclosure regarding the investment including risk, disclosure statements, prospectuses or
22 financial statements.
23

24 13. RESPONDENTS did not inform the investors in Redbank that at the time of their
25 investment, the president of Redbank was the subject of a cease and desist order issued by the State of
26

1 Maryland for securities fraud and was under order to repay approximately \$2,000,000 to Maryland
2 investors.

3 14. RESPONDENTS did not inform the investors in Sebastian that prior to their
4 investment, the State of Pennsylvania had issued a cease and desist order against Sebastian ordering it
5 to stop the offer and sale of unregistered securities.

6 15. RESPONDENTS did not inform the investors in World Vision that prior to their
7 investment, the State of Pennsylvania had issued a cease and desist order against World Vision
8 ordering it to stop the offer and sale of unregistered securities.

9 16. Subsequent to the last Redbank investment, on June 3, 1999, the United States
10 Securities and Exchange Commission ("SEC") sued the principals of Redbank Petroleum, Inc. for
11 securities fraud, for operating Redbank as a Ponzi scheme.

12 17. Subsequent to the last Sebastian investment, on August 19, 1999, the SEC sued the
13 principals of Sebastian International Entertainment, Inc. for securities fraud, in operating Sebastian as
14 a Ponzi scheme. A receiver was appointed to operate Sebastian.

15 18. Subsequent to the last World Vision investment, on September 3, 1999, World Vision
16 filed for bankruptcy. A trustee was appointed to operate the business.

17 19. Subsequently to the last investment, other states have issued orders against Pacific
18 Air, World Vision, Sebastian, Caffe Diva, TSSI and NEISI for the sale of unregistered securities.

19
20
21 **IV.**

22 **VIOLATION OF A.R.S. § 44-1841**

23 **(Offer and Sale of Unregistered / Unauthorized Securities)**

24 20. Each of the preceding paragraphs is incorporated by reference.
25
26

1 21. From on or about June 1998, RESPONDENTS offered and/or sold securities in the form
2 of promissory notes or investment contracts, within and/or from Arizona.

3 22. The securities referred to above were not registered under A.R.S. §§ 44-1871 through 44-
4 1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been made under
5 A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not offered or sold in
6 exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule or order promulgated
7 by the Commission.
8

9 23. This conduct violates A.R.S. § 44-1841.

10 **V.**

11 **VIOLATION OF A.R.S. § 44-1842**

12 **(Transactions by Unregistered Dealers and Salesmen)**

13 24. Each of the preceding paragraphs is incorporated by reference.

14 25. In connection with the offers to sell and the sale of securities, RESPONDENTS acted as
15 dealers and/or salesmen within and/or from Arizona, although not registered pursuant to the provisions of
16 Article 9 of the Securities Act.

17 26. This conduct violates A.R.S. § 44-1842.

18 **VI.**

19 **VIOLATION OF A.R.S. § 44-1991**

20 **(Fraud in Connection with the Offer and Sale of Securities)**

21 27. Each of the preceding paragraphs is incorporated by reference.

22 28. In connection with the offers and sales of securities within and/or from Arizona,
23 RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made
24 untrue statements of material fact or omitted to state material facts which were necessary in order to
25 make the statements made not misleading in light of the circumstances under which they were made; and
26 (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud

1 or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the
2 following:

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

17 29. This conduct violates A.R.S. § 44-1991.

18 **VII.**

19 **REQUESTED RELIEF**

20 The Division requests that the Commission grant the following relief against each respondent:

- 21 1. Order RESPONDENTS to permanently cease and desist from violating the Securities
22 Act, pursuant to A.R.S. § 44-2032;
- 23 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from
24 their acts, practices or transactions, including without limitation a requirement to make restitution
25 pursuant to A.R.S. § 44-2032;

