

# ORIGINAL NEW APPLICATION



0000062376

BEFORE THE ARIZONA CORPORATION COMMISSION

## COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

2006 DEC -8 P 3:15

Arizona Corporation Commission

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In the matter of:

David J. Leyshon d/b/a Leyshon Capital d/b/a  
Leyshon Capital Management d/b/a Leyshon  
Capital Management, LLC and Denise Leyshon,  
husband and wife,  
10603 W. Lone Cactus Drive, Peoria, AZ 85382  
Respondents.

DOCKET NO. S-20490A-06-0764

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

**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 David J. Leyshon d/b/a Leyshon Capital d/b/a Leyshon Capital Management d/b/a Leyshon Capital Management, LLC, has engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") and the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

## I.

### JURISDICTION

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

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II.

RESPONDENTS

2. David J. Leyshon ("LEYSHON") is an individual whose last known address is 10603 West Lone Cactus Drive, Peoria, Arizona.

3. According to his own sworn testimony before the Division, LEYSHON has been doing business as Leyshon Capital Management since at least the year 1999. Leyshon Capital Management is not an NASD member institution, nor an entity authorized to do business in Arizona.

4. On August 15, 2003, LEYSHON registered the trade name "LEYSHON CAPITAL" with the Arizona Secretary of State. The Arizona Secretary of State's records show this trade name is registered at 10603 W. Lone Cactus Drive, Peoria, AZ. The public records identify the type of business under this name to be: stock trading, real estate, and rentals. However, no entity with this name is registered to do business in the State of Arizona.

5. LEYSHON has also been known to use the name Leyshon Capital Management, LLC with a business address of 10603 W. Lone Cactus Drive, Peoria, AZ 85382. However, no entity with this name is registered to do business in the State of Arizona.

6. Denise Leyshon was at all relevant times the spouse of LEYSHON. Denise Leyshon is joined in this action under A.R.S. § 44-2031(C) and A.R.S. § 44-3291(C) solely for purposes of determining the liability of the marital community.

7. At all times relevant, LEYSHON and Denise Leyshon were acting for their own benefit, and for the benefit or in furtherance of the marital community.

8. LEYSHON may be referred to as "Respondent." Although Leyshon Capital Management, LLC, Leyshon Capital Management, and Leyshon Capital are entities known to not exist in Arizona, to the extent these names were used by LEYSHON in his business transactions, "LCM" may be used to abbreviate and refer to these names interchangeably, singularly or collectively. Denise Leyshon may be referred to as "Respondent's spouse."

III.

FACTS

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3 9. LEYSHON was registered as a securities salesman in Arizona from October 25, 2001 to  
4 December 8, 2004 with Synergy Investment Group, LLC ("SYNERGY"). SYNERGY is a  
5 registered securities dealer with the State of Arizona.

6 10. LEYSHON moved to Arizona in or about July of 2003 from North Carolina.

7 11. From July of 2003 to December 8, 2004, LEYSHON was residing in Arizona and employed  
8 by SYNERGY.

9 12. On December 8, 2004, LEYSHON was terminated from his employment with SYNERGY.  
10 Upon termination of his employment with SYNERGY, LEYSHON's registration status as a  
11 securities salesman was automatically suspended. By December 31, 2004 LEYSHON's status as  
12 securities salesman in Arizona expired.

13 13. After LEYSHON's status as a registered securities salesman was suspended or expired,  
14 LEYSHON entered into contracts from Arizona under the name of Leyshon Capital Management  
15 LLC with investors ("LCM agreements" or "agreements"). In the agreements, Leyshon Capital  
16 Management, LLC was represented to be an investment adviser and was shown as having the same  
17 Arizona address as LEYSHON's home address.

18 14. There is no entity registered to do business in Arizona with the name Leyshon Capital  
19 Management LLC, Leyshon Capital Management, or Leyshon Capital. Additionally, they are not  
20 registered to sell securities or licensed to provide investment advisory services in the State of  
21 Arizona.

22 15. The LCM agreements signed by investors represented that LEYSHON was an "Investment  
23 Adviser." The LCM agreements signed by investors gave LCM authority to purchase and sell  
24 investments and by its own terms was described as a "long-term investment vehicle." Investors  
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1 represent that the investments authorized to be purchased and sold pursuant to the agreement were  
2 registered securities.

3 16. LEYSHON has never been registered as an investment adviser in the State of Arizona and at  
4 the time the LCM agreements were entered, LEYSHON's registration as a securities salesman in  
5 Arizona was either suspended or expired.

6 17. Investors placed at least \$288,000 in LEYSHON's control pursuant to the LCM agreements.  
7 The LCM agreements provided that LEYSHON would be paid a percentage of the value of assets  
8 under management. LEYSHON affirmed this fee arrangement in statements he has made under oath  
9 to the Division.

10 18. LEYSHON admitted under oath that he placed numerous investors funds in an E-trade  
11 account over which he was the only named title holder and signor on the account.

12 19. LEYSHON admitted to purchasing stock and stock options for investors in LCM.

13 20. LEYSHON admitted that his personal funds and those of investors were pooled together in  
14 an E-trade account. LEYSHON admits that monies from the pooled e-trade account were placed in  
15 his personal account and used for personal expenses.

16 21. LEYSHON admitted that he sent investors statements concerning their accounts with LCM.  
17 These statements identify that the account statements originated from Arizona. These statements  
18 also purport to show the securities purchased on behalf of individual investors.

19 22. LEYSHON was requested by the Division to provide a detailed accounting to show how he  
20 kept track of individuals' investments managed by LCM. Although he indicated he would provide  
21 these records LEYSHON has failed to do so.

22 23. Investors with LEYSHON have demanded their accounts be closed and their monies be  
23 returned. LEYSHON admits that he has been notified of these demands and that investors have not  
24 been fully repaid the amount of their investment and that there are outstanding balances owed to  
25 them.

24. On August 23, 2006, the National Association of Securities Dealers (“NASD”) entered a default decision barring LEYSHON from associating with any NASD member firm in any capacity in Disciplinary Proceeding NO. E3A2004035601.

#### IV.

## VIOLATION OF A.R.S. § 44-1842

**(Transactions by Unregistered Dealer or Salesmen)**

25. LEYSHON individually and/or as LCM offered or sold securities within or from Arizona, while not registered as a dealer or salesman pursuant to the provisions of Article 9 of the Securities Act.

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

**V.**

## VIOLATION OF A.R.S. § 44-1991

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

27. In connection with the offer or sale of securities within or from Arizona, LEYSHON 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. LEYSHON's conduct includes, but is not limited to, the following:

a) Failing to inform investors that his registration status as a securities salesman in Arizona was suspended or expired when he entered into agreements to manage their funds for investment purposes.

b) Failing to inform investors that he pooled all the investors funds in one account under his name individually and that directed funds from this account to his own personal use.

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

1 29. LEYSHON made, participated in, or induced the sale and purchase of a security within the  
2 meaning of A.R.S. § 44-2003(A). Therefore, LEYSHON is liable for the above violations of A.R.S.  
3 § 44-1842 and 44-1991.

4 **VI.**

5 **REMEDIES PURSUANT TO A.R.S. § 44-1962**

6 **(Denial, Revocation or Suspension of Registration of Salesman; Restitution, Penalties, or other**  
7 **Affirmative Action)**

8 30. LEYSHON's conduct is grounds to revoke his registration as a securities salesman with the  
9 Commission pursuant to A.R.S. § 44-1962. Specifically, among other things, LEYSHON has:

10 a) Engaged in dishonest or unethical practices in the securities industry in violation of  
11 A.R.S. § 44-1962(A)(10).

12 b) Engaged in dishonest or unethical practices in business or financial matters in  
13 violation of A.R.S. § 44-1962(A)(12).

14 c) Is subject to an order barring him from associating with any NASD member firm in  
15 any capacity in violation of A.R.S. § 44-1962(A)(8).

16 31. LEYSHON's conduct is grounds to assess restitution, penalties, and/or take appropriate  
17 affirmative action pursuant to A.R.S. § 44-1962(B). Specifically, LEYSHON has violated A.R.S. §  
18 44-1962(A)(10) by making unauthorized use of customer funds or converting customers' securities  
19 for his personal benefit.

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**VII.**

**VIOLATION OF A.R.S. § 44-3151**

**(Transactions by Unlicensed Investment Advisers  
or Investment Adviser Representatives)**

32. LEYSHON transacted business in Arizona as an investment adviser or investment adviser representative while not licensed or in compliance with Article 4 of the IM Act.

33. This conduct violates A.R.S. § 44-3151.

**VIII.**

**VIOLATION OF A.R.S. § 44-3241**

**(Fraud in the Provision of Investment Advisory Services)**

34. LEYSHON engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which LEYSHON, 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; (iii) misrepresented professional qualifications with the intent that the client rely on the misrepresentation; and (iv) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit. LEYSHON's conduct includes, but is not limited to, the following:

a) Misrepresenting that he is a licensed Investment Adviser.

b) Misrepresenting that Leyshon Capital Management, LLC, is an investment adviser in Arizona.

35. This conduct violates A.R.S. § 44-3241.

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**IX.**

**REQUESTED RELIEF**

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

1. Order LEYSHON to permanently cease and desist from violating the Securities Act and Investment Management Act, pursuant to A.R.S. §§ 44-2032, 44-3292, 44-1962;

2. Order LEYSHON 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, 44-3292, 44-1962;

3. Order LEYSHON 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 LEYSHON to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the Investment Management Act, pursuant to A.R.S. § 44-3296;

5. Order the revocation of LEYSHON's registration as a securities salesman pursuant to A.R.S. § 44-1962;

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

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

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## X.

## HEARING OPPORTUNITY

Respondent and/or Respondent's Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any party requests a hearing, the party 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](http://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 Director, voice phone number 602/542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

## XI.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if any Respondent or Respondent's Spouse requests a hearing, he or she must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007, within 30 calendar days after the date of service of this Notice of Opportunity for Hearing.  
2 A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions  
3 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet  
4 web site at [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

5 Additionally, an Answer must be served upon the Division. Pursuant to A.A.C. R14-4-303,  
6 service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to  
7 the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to the  
8 attorney of record.

9 The Answer shall contain an admission or denial of each allegation in this Notice and the  
10 original signature of each party, respondent or their attorney. A statement of a lack of sufficient  
11 knowledge or information shall be considered a denial of an allegation. An allegation not denied  
12 shall be considered admitted.

13 When anyone filing an answer intends in good faith to deny only a part or a qualification of  
14 an allegation, he or she shall specify that part or qualification of the allegation denied and shall  
15 admit the remainder. Anyone filing an answer waives any affirmative defense not raised in the  
16 answer.

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

19 Dated this 8 day of December, 2006.

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22 Matthew Neubert  
23 Director of Securities  
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