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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

Arizona Corporation Commission

**DOCKETED**

MAR -2 2007

DOCKETED BY	
<i>AM</i>	<i>NR</i>

IN THE MATTER OF:

GARY WAYNE HARDY, CRD# 1298371,  
dba HARDY ASSET MANAGEMENT, and  
SHERRY HARDY, husband and wife,  
1711 W. Gary Drive  
Chandler, AZ 85224

HARDY ASSET MANAGEMENT, a sole  
proprietorship  
4625 S. Wendler Drive, Ste. 111  
Tempe, AZ 85282

DOCKET NO. S-20426A-05-0768

DECISION NO. 69356

**OPINION AND ORDER**

DATE OF HEARING: November 16, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Ms. Pamela T. Johnson, Senior Counsel, on behalf of,  
the Securities Division of the Arizona Corporation  
Commission

**BY THE COMMISSION:**

On October 27, 2005, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity of Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice") against Gary Wayne Hardy, Sherry Hardy<sup>1</sup> and Hardy Asset Management ("HAM") (collectively the "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") and the Investment Management Act ("IMACT") in connection with the offer and sale of securities.

Respondents were duly served with a copy of the Notice.

<sup>1</sup> The Division subsequently dismissed Sherry Hardy from the proceeding.

1 On November 10, 2005, Respondent Gary Wayne Hardy filed a request for hearing.

2 On November 23, 2005, Respondent Gary Wayne Hardy filed a second request for hearing  
3 and an Answer.

4 On November 23, 2005, counsel for Respondent Sherry Hardy filed a Notice of Bankruptcy  
5 Filing.

6 On December 5, 2005, by Procedural Order, a pre-hearing conference was scheduled for  
7 February 16, 2005.

8 On December 13, 2005, the Division filed a Notice of Dismissal of Respondent Sherry Hardy  
9 from the proceeding.

10 On December 23, 2005, Respondent Gary Wayne Hardy filed a request for a continuance of  
11 the pre-hearing stating that he was currently in the custody of the Maricopa County Sheriff and was  
12 scheduled to be transferred to the custody of the Arizona Department of Corrections ("ADOC") on  
13 February 16, 2006. According to Mr. Hardy, his anticipated release date from custody was to be  
14 April 28, 2006. Mr. Hardy further advised that his mailing address would be changed as of January  
15 5, 2006.

16 On January 4, 2006, by Procedural Order, the pre-hearing conference scheduled for February  
17 16, 2006, was continued indefinitely and the Division was ordered to file a Motion to Reschedule the  
18 pre-hearing conference after Mr. Hardy's release from custody.

19 On August 1, 2006, the Division filed a Motion to Amend the Notice which was served upon  
20 the Respondent while incarcerated. Mr. Hardy did not file a response.

21 On August 29, 2006, the Division filed a request to reschedule the pre-hearing conference and  
22 indicated that Mr. Hardy had been released from the ADOC's custody.

23 On August 30, 2006, by Procedural Order, the pre-hearing conference was rescheduled for  
24 September 22, 2006, and the Division's Motion to Amend the Notice was granted.

25 On September 14, 2006, Mr. Hardy filed a letter in which he indicated that he had been  
26 indicted in federal court on matters related to the Notice herein and requested that the Commission's  
27 administrative proceeding be stayed until the conclusion of the criminal proceeding.

28 ...

1 On September 22, 2006, the Division appeared through counsel. Mr. Hardy did not appear.  
 2 The Division requested that a hearing be scheduled and cited case law in support of its request that  
 3 the administrative proceeding go forward because the United States Constitution does not ordinarily  
 4 require that a civil proceeding be stayed pending the resolution of criminal charges. By Procedural  
 5 Order, a hearing was scheduled for November 16, 2006, and a date established for the exchange of  
 6 exhibits and witness lists.

7 On November 16, 2006, a full public hearing was held before a duly authorized  
 8 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Respondents did  
 9 not appear in person or through counsel. The Division appeared and was represented by counsel. At  
 10 the conclusion of the hearing, the matter was taken under advisement pending submission of a  
 11 Recommended Opinion and Order to the Commission.

12 \* \* \* \* \*

13 Having considered the entire record herein and being fully advised in the premises, the  
 14 Commission finds, concludes, and orders that:

15 \* \* \* \* \*

16 **FINDINGS OF FACT**

17 1. Gary Hardy, since August 1984, has been at all pertinent times a registered securities  
 18 salesman in Arizona, registered with CRD# 1298371, and has operated as a registered securities  
 19 salesman and an investment adviser.

20 2. Ms. Meg Kennedy, a legal assistant for the Division, testified concerning the results of  
 21 her investigation and the Division's Exhibits S-1 through S-10 which were admitted into evidence.

22 3. Mr. Hardy was registered in Arizona in association with Allmerica Investments, Inc.  
 23 ("Allmerica") from August 8, 1984, to July 31, 2000.

24 4. Mr. Hardy was registered in Arizona in association with SunAmerica Securities, Inc.  
 25 ("SunAmerica") from August 17, 2000, until he resigned on or about June 9, 2005. Mr. Hardy is  
 26 currently not affiliated with any securities dealer.

27 5. HAM, since October 1, 2000, was a sole proprietorship owned and operated by Mr.  
 28 Hardy, and registered with CRD# 116821, as an Arizona registered investment adviser.

1           6.       In approximately February 2005, a SunAmerica customer, Samuel Edmondson,  
2 purchased securities in the form of certificates of deposit (“CDs”) which were termed “Internotes” by  
3 Mr. Hardy. Mr. Edmondson sent Mr. Hardy a check for \$50,000 payable to HAM and Mr. Hardy  
4 sent Mr. Edmondson a document purportedly reflecting an investment of \$50,000 in “Selected  
5 Bonds” that Mr. Hardy claimed to have acquired for him.

6           7.       After Mr. Edmondson made this investment, despite several requests for more  
7 information, Mr. Hardy failed to provide documentation as to how or if the money was invested.

8           8.       On or about June 20, 2005, Mr. Edmondson reported the matter to the Tempe Police  
9 Department, which proceeded to investigate the allegations by Mr. Edmondson.

10          9.       After being questioned by the Tempe Police Department, Mr. Hardy acknowledged  
11 that he had misappropriated funds from nine investors. After further investigation, the Tempe Police  
12 Department learned that Mr. Hardy misappropriated \$582,076 from nine investors in 16 transactions  
13 between 1998 and 2005. These investments were subsequently verified during the Division’s  
14 investigation.

15          10.      Ms. Kennedy testified that none of the investors received confirmations, statements, or  
16 other written information verifying the existence of their investments. Mr. Hardy sent some  
17 customers falsified HAM statements or “customer reports” which reflected their purported purchase  
18 of the securities, while other customers received no information or documents concerning how Mr.  
19 Hardy invested their money.

20          11.      Ms. Kennedy testified about the documents which the Division had admitted into  
21 evidence including affidavits from six investors, copies of investor checks written to HAM, and  
22 statements demonstrating that the investors believed that they were purchasing legitimate  
23 investments, including CDs, bonds and/or annuities.

24          12.      Ms. Kennedy testified further that she interviewed another investor, Milton Zehr, who  
25 believed that he had invested in an annuity. Mr. Zehr’s check for \$20,000 was paid to HAM and  
26 Respondents provided him with a HAM Account Statement that reflected an investment in a “5-year  
27 Private CD Annuity” with a maturity date of March 29, 2009 from what was called the “Capital  
28 Bank” in Norfolk, Virginia.



- 1 • misrepresenting and/or failing to disclose the use of the investors' investment funds by
- 2 stating that he was placing their funds in various types of investments;
- 3 • falsifying information about the purported investments;
- 4 • failing to disclose his own financial condition; and
- 5 • failing to disclose that he was misappropriating investor funds for his personal use.

6  
7 4. Respondents' misrepresentations, omissions of material facts, and misappropriation of  
8 investor funds in connection with the purported sale of the CDs, bonds and annuities constituted  
9 dishonest and unethical conduct in business and financial matters in violation of A.R.S. §44-  
3201(14).

10 5. Pursuant to A.R.S §44-1962, Mr. Hardy's registration as a securities salesman should  
11 be revoked by the Commission.

12 6. Pursuant to A.R.S §44-3201, HAM's registration as an investment adviser should be  
13 revoked by the Commission.

14 7. Respondents violated the Act and the IMACT and their conduct is grounds for the  
15 Commission to issue a cease and desist order pursuant to A.R.S. §§44-2032, 44-3292, 44-1962, 44-  
3201, and all other provisions under the Act and the IMACT.

16 8. Respondents violated the Act and the IMACT and their conduct is grounds for an  
17 order of restitution pursuant to A.R.S. §§44-2032, 44-3292, 44-1962, and 44-3201.

18 9. Respondents violated the Act and the IMACT and their conduct is grounds for the  
19 imposition of administrative penalties under A.R.S. §§44-2036, 44-3296, 44-1962, and 44-3201.

20 **ORDER**

21 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission  
22 under A.R.S. §§44-2032, 44-3292, 44-1962 and 44-3201, the Respondents Gary Wayne Hardy and  
23 Hardy Asset Management, shall permanently cease and desist from violating all provisions of the  
24 Securities Act and the Investment Management Act.

25 IT IS FURTHER ORDERED that pursuant to A.R.S. §§44-2032, 44-3292, 44-1962, and 44-  
26 3201 Respondents Gary Wayne Hardy and Hardy Asset Management, jointly and severally, shall  
27 make restitution to the Commission on behalf of investors in the amount of \$582,076, which  
28 restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal setoffs by Respondents and

1 confirmed by the Director of Securities, said restitution to be made within 30 days of the effective  
2 date of this Decision.

3 IT IS FURTHER ORDERED that any amount outstanding for restitution shall accrue interest  
4 at the rate of 10 percent per annum from the dates of investment until paid by Respondents.

5 IT IS FURTHER ORDERED that payment shall be made to the State of Arizona to be placed  
6 in an interest-bearing account maintained and controlled by the Commission. The Commission shall  
7 disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any  
8 restitution funds that the Commission cannot disburse because an investor refuses to accept such  
9 payment shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the  
10 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse  
11 shall be transferred to the general fund of the State of Arizona.

12 IT IS FURTHER ORDERED pursuant to A.R.S. §§44-2036, 44-3296, 44-1962, and 44-3201,  
13 that Respondents, Gary Wayne Hardy and Hardy Asset Management, jointly and severally, shall pay  
14 as and for an administrative penalty the sum of \$150,000.00.

15 IT IS FURTHER ORDERED that payment shall be made in full no later than 30 days after  
16 the effective date of this Decision payable by either cashier's check or money order to the State of  
17 Arizona.

18 IT IS FURTHER ORDERED that any amount outstanding for the administrative penalty shall  
19 accrue interest at the rate of 10 percent per annum from the effective date of this Decision until paid  
20 in full. The payment obligation for this administrative penalty shall be subordinate to any restitution  
21 obligations ordered herein and shall become immediately due and payable only after restitution  
22 payments have been paid in full or upon Respondents' default with respect of Respondents'  
23 restitution obligations.

24 IT IS FURTHER ORDERED that pursuant to A.R.S. §44-1962, Respondent Gary Wayne  
25 Hardy's securities salesman registration is revoked.

26 IT IS FURTHER ORDERED that pursuant to A.R.S. §44-3201, Hardy Asset Management's  
27 investment adviser license is revoked.

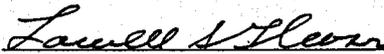
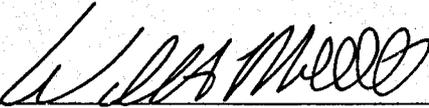
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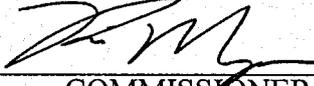
1 IT IS FURTHER ORDERED that a bankruptcy filing by any of the Respondents shall be an  
2 act of default. If any Respondent does not comply with this Decision, any outstanding balance may  
3 be deemed in default and shall be immediately due and payable.

4 IT IS FURTHER ORDERED that if any Respondent fails to comply with this Decision the  
5 Commission may bring further legal proceedings against the Respondent.

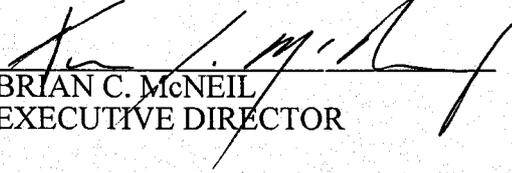
6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8  
9    
10 CHAIRMAN COMMISSIONER

11     
12 COMMISSIONER COMMISSIONER COMMISSIONER

13  
14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Director of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this 2<sup>nd</sup> day of March, 2007.

19   
20 BRIAN C. McNEIL  
21 EXECUTIVE DIRECTOR

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

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

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1 SERVICE LIST FOR: GARY WAYNE HARDY and HARDY ASSET  
2 MANAGEMENT

3 DOCKET NO.: S-20426A-05-0768

4 Gary Hardy  
5 c/o Allen and Betty Hardy  
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13 Attorneys for Sherry Hardy

14 Matt Neubert  
15 Securities Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington Street  
18 Phoenix, AZ 85007

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