

4/24/08

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KRISTIN K. MAYES  
GARY PIERCE

ORIGINAL



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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Mike Gleason, Chairman  
William A. Mundell  
Jeff Hatch-Miller  
Kristin K. Mayes  
Gary Pierce

Arizona Corporation Commission

DOCKETED

APR 11 2008

FROM: Matthew J. Neubert  
Director of Securities

*mjn*

DOCKETED BY *nr*

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

2008 APR 11 P 4: 19

RECEIVED

DATE: April 4, 2008

RE: Docket No. S-20554A-07-0552 G'ieber Financial, LLC, David Gotlieb and Stacey Scibelli-Gotlieb

CC: Brian C. McNeil, Executive Director

On September 28, 2007, the Securities Division filed a Notice of Opportunity for Hearing Regarding proposed order to cease and desist, order for restitution for administrative penalties of denial and for other affirmative action against G'ieber Financial, LLC, David Gotlieb and Stacey Scibelli-Gotlieb. On October 9, 2007, the Respondents requested a hearing.

G'ieber Financial, LLC ("G'ieber") submitted an application for Investment Adviser. David Gotlieb ("Gotlieb") submitted an application for an Investment Adviser Representative. Since December of 2001, G'ieber has been a Delaware limited liability company. G'ieber was approved as a foreign limited liability company in June of 2003.

Gotlieb was the managing member of G'ieber. G'ieber was the general partner of G'ieber Value Fund LP. G'ieber Value Fund LP was organized under the law of Delaware in 2000. G'ieber Value Fund LP was registered with the Arizona Secretary of State's office as a foreign limited partnership in 2002.

Attached is a proposed consent signed by G'ieber, Gotlieb and Mrs. Scibelli-Gotlieb. The proposed consent denies G'ieber's application as an investment adviser and Gotlieb's application as an investment adviser representative. The denial of the applications is also based on violations of the Respondents' fiduciary duty and Gotlieb's conflicts of interest. The Respondents admit the

Findings of Fact and Conclusions of Law. The proposed consent also requires payment of restitution in the amount of \$1,559,650 and the payment of an administrative penalty in the amount of \$50,000.

Originator: Wendy Coy

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

7 In the matter of )  
8 G'IEBER FINANCIAL, LLC, a Delaware ) DOCKET NO. S-20554A-07-0552  
9 limited liability company, CRD#128954 ) DECISION NO. \_\_\_\_\_  
10 2500 South Power Road, Ste 222-Rm 213 )  
11 Mesa, AZ 85208 ) **ORDER TO CEASE AND DESIST, ORDER**  
12 ) **OF RESTITUTION, ORDER OF DENIAL,**  
13 ) **ORDER FOR ADMINISTRATIVE**  
14 ) **PENALTIES AND CONSENT TO SAME**  
15 ) **BY: G'IEBER FINANCIAL, LLC, DAVID A.**  
16 ) **GOTLIEB AND STACEY SCIBELLI-**  
17 ) **GOTLIEB**  
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14 G'IEBER FINANCIAL, LLC ("G'IEBER"), DAVID A. GOTLIEB and STACEY  
15 SCIBELLI-GOTLIEB ("Respondents") elect to permanently waive any right to a hearing and  
16 appeal under Articles 7 and 8 of the Arizona Investment Management Act, A.R.S. § 44-3101 *et*  
17 *seq.* ("Investment Management Act") with respect to this Order to Cease and Desist, Order of  
18 Restitution, Order of Denial, Order for Administrative Penalties and Consent to Same ("Order").  
19 Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission");  
20 admit the Findings of Fact and Conclusions of Law contained in this Order; and consent to the  
21 entry of this Order by the Commission.

22 **I.**

23 **FINDINGS OF FACT**

24 1. G'IEBER, CRD#128954, is a limited liability company organized on or about  
25 December 3, 2001 under the laws of the state of Delaware. G'IEBER's application for  
26 registration as a foreign limited liability company in Arizona was approved on June 30, 2003.

1 G'IEBER relocated from Massachusetts to Arizona in November of 2001 and is currently located  
2 at 2500 S. Power Road, Mesa, Arizona. Since December 6, 2000, G'IEBER has been licensed as  
3 an investment adviser in Massachusetts.

4 2. In or around April of 2004, G'IEBER filed an application with the Arizona  
5 Corporation Commission for licensure as an investment adviser. That application was deemed  
6 abandoned on or about January 20, 2005, due to G'IEBER's failure to respond to the Division's  
7 request for information. On May 18, 2006, G'IEBER filed another application for licensure as an  
8 Arizona investment adviser.

9 3. GOTLIEB, CRD#2089760, is and was at all pertinent times managing and sole  
10 member of G'IEBER. GOTLIEB was a securities salesman, registered in Arizona in affiliation with  
11 Hibbard Brown & Co., Inc. from October 23, 1991 to April 25, 1992; and with Securities America,  
12 Inc. from April 3, 1996 to December 1, 2000. GOTLIEB's registration as a securities salesman in  
13 Arizona was automatically suspended, pursuant to A.R.S. § 44-1949, on December 1, 2000, when he  
14 ceased to be associated with a registered dealer, and expired on December 31, 2000. GOTLIEB is  
15 and was at all pertinent times licensed as an investment adviser representative in Massachusetts  
16 from December 6, 2000 to the present.

17 4. GOTLIEB has been a resident of Arizona since November of 2001. GOTLIEB is  
18 not and has never been licensed as an investment adviser representative in Arizona. On or about  
19 August 16, 2006, GOTLIEB filed an application for licensure as an Arizona investment adviser  
20 representative.

21 5. STACEY SCIBELLI-GOTLIEB was at all relevant times the spouse of GOTLIEB  
22 and is joined in this action under A.R.S. § 44-3291(C) solely for purposes of determining the liability  
23 of the marital community. At all relevant times, GOTLIEB and STACEY SCIBELLI-GOTLIEB  
24 were acting for their own benefit and for the benefit or in furtherance of the marital community.

25 6. G'IEBER AND GOTLIEB may be collectively referred to as "RESPONDENTS."  
26 STACEY SCIBELLI-GOTLIEB may be referred to as "RESPONDENT SPOUSE."

1           7.       GOTLIEB was a registered securities salesman, in Arizona, from approximately  
2 1991. According to GOTLIEB, in approximately 2000, he decided to leave the brokerage firm  
3 where he was employed and offer his clients an opportunity to “move forward” with him through  
4 G’ieber Value Fund L.P. (“G’ieber Fund”).

5           8.       G’ieber Fund is a limited partnership organized under the laws of Delaware in or  
6 around April of 2000. G’ieber Fund was registered with the Arizona Secretary of State’s Office as a  
7 foreign limited partnership on or about December 12, 2002 and is currently located at 2500 S.  
8 Power Road, Mesa, Arizona. G’ieber Fund is a pooled investment partnership. G’ieber Fund has  
9 approximately 40 limited partners who invested approximately \$3,570,000.00. G’ieber Fund is the  
10 sole client of G’IEBER.

11           9.       GOTLIEB is the managing and sole member of G’IEBER. G’IEBER is the general  
12 partner of G’ieber Fund. GOTLIEB has custody of the client’s, G’ieber Fund, assets.

13           10.      RESPONDENTS operated, in Arizona, as an unlicensed investment adviser and  
14 investment adviser representative in Arizona since 2001.

#### 15                           **OFFERING MEMORANDUM AND ADVISORY AGREEMENT**

16           11.      When GOTLIEB left the brokerage firm where he was working, GOTLIEB solicited  
17 a number of clients to become limited partners in a new fund he was starting, G’ieber Fund.  
18 GOTLIEB provided an offering memorandum dated October 19, 2000 to those former clients. The  
19 offering memorandum not only explained the sale of the limited partnership interests, it also  
20 explained, in detail, the terms of the investment advisory services that would be provided by  
21 G’IEBER.

22           12.      RESPONDENTS made all investment decisions and had full custody and discretion  
23 over the funds in G’ieber Fund.

24           13.      G’ieber Fund’s objective was to generate substantial capital appreciation during  
25 periods of market strength, while preserving capital and profiting selectively during periods of stock  
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1 market weakness. G'ieber Fund sought substantial capital appreciation by investing in, and trading  
2 equities, options and other investments.

3 14. G'IEBER was to receive compensation for providing investment advice and  
4 managing the investments of G'ieber Fund in the form of management fees, as well as receiving a  
5 share of the profits of the G'ieber Fund. G'IEBER would be paid by G'ieber Fund a monthly  
6 management fee equal to  $1/12^{\text{th}}$  of 1% (approximately 1.0% annually) of the net asset value of each  
7 limited partner's book capital account. G'IEBER was allotted an incentive equal to 20% of the new  
8 appreciation of G'ieber Fund during each calendar quarter. The incentive allocations accrued  
9 monthly.

10 15. From about 2001 to about May of 2006, G'IEBER collected fees from G'ieber Fund  
11 for providing investment advisory services. Beginning in about May of 2006, after being notified by  
12 the Securities Division of the Arizona Corporation Commission that G'IEBER could not receive  
13 compensation for investment advisory services provided to G'ieber Fund unless licensed or exempt  
14 from licensure, G'IEBER continued to accrue fees from G'ieber Fund by deducting the fees from  
15 the limited partners' capital accounts through an accounting entry.

16 16. All investment decisions were made exclusively by GOTLIEB through G'IEBER.  
17 G'IEBER had "unlimited authority" to administer the financial activities of G'ieber Fund. Further,  
18 the offering memorandum states that GOTLIEB will supervise all of G'ieber Fund's investment and  
19 administrative functions.

20 17. The offering memorandum states that the success of G'ieber Fund will depend on the  
21 ability of GOTLIEB to develop and implement investment strategies to achieve G'ieber Fund's  
22 investment objectives.

23 18. G'IEBER was to provide office space and certain support services at no cost to  
24 G'ieber Fund. GOTLIEB through G'IEBER, however, invested G'ieber Fund money in an office  
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1 building in Mesa, Arizona, which housed not only G'ieber Fund but also G'IEBER and GOTLIEB's  
2 mortgage broker<sup>1</sup> businesses.

3 19. G'ieber Fund was to provide GOTLIEB a 20 year life insurance policy with death  
4 benefits of one million dollars. The beneficiary was to be G'ieber Fund. According to GOTLIEB,  
5 G'ieber Fund is paying for an insurance policy on GOTLIEB in the amount of two million dollars.  
6 G'ieber Fund is the beneficiary for one million dollars; GOTLIEB's family is the beneficiary of the  
7 remaining one million dollars. G'ieber Fund was not reimbursed for the expense of the extra  
8 coverage.

9 20. Although the offering memorandum generally discloses conflicts of interest it does  
10 not disclose specific conflicts that may be present involving G'IEBER and its affiliates. The  
11 offering memorandum is silent regarding material conflicts of interest.

12 21. In addition to the offering memorandum, RESPONDENTS gave the limited partners  
13 in G'ieber Fund a limited partnership agreement. The limited partnership agreement states that  
14 G'IEBER may withdraw or receive a distribution of any portion of its own interests upon notice to  
15 the limited partners. G'IEBER has been liquidating its shares without the required notice to the  
16 investors.

17 22. The offering memorandum identifies G'ieber Fund's investment objective as  
18 substantial capital appreciation by investing in and trading equities, options and other tangible  
19 investments. Since the beginning of G'ieber Fund, the main investments made by G'ieber Fund  
20 were in stocks. In about 2004, G'ieber Fund began funding loans to individuals. The loans were  
21 notes secured by deeds of trust. On a number of occasions, the notes and deeds of trust were  
22 between GOTLIEB and his spouse, STACEY SCIBELLI-GOTLIEB and the borrower. On at least  
23 one occasion, the note was between STACEY SCIBELLI-GOTLIEB and the borrower only.

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26 <sup>1</sup> Great Southwest Mortgage and Western Horizon Mortgage

**G'IEBER FINANCIAL WEBSITE**

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2           23.     RESPONDENTS maintained a website that provides information about G'IEBER,  
3 GOTLIEB and G'ieber Fund. The website included performance history and investment strategies  
4 of the RESPONDENTS and G'ieber Fund. The general public was able to access almost all  
5 information on the website. The website restricts access to individual account statements to the  
6 individual limited partners. Potential investors are able to request information through the website.

**COMMUNITY CAPITAL CORPORATION**

7  
8           24.     On or about October of 2000, GOTLIEB became a director and recording secretary  
9 of COMMUNITY CAPITAL CORPORATION ("CCC"). Upon information and belief, CCC was  
10 a mortgage lender and broker conducting business in California, Arizona and other states. CCC was  
11 a corporation organized under the laws of California on February 4, 1999. CCC filed in Arizona as a  
12 foreign corporation in November of 2000. CCC's application for registration as a foreign  
13 corporation was approved by the Arizona Corporation Commission on November 2, 2000.

14           25.     As of February 5, 2001, GOTLIEB became Chief Financial Officer ("CFO") and  
15 continues to be a director and the recording secretary of CCC. GOTLIEB is currently the sole officer  
16 and director of CCC.

17           26.     Between February 1, 2001 and August 31, 2001, G'ieber Fund purchased 100,000  
18 shares of stock in CCC for approximately \$200,000. CCC used the money from the sale of stock for  
19 the operations of CCC.

20           27.     G'ieber Fund made a series of investments in CCC. The decision to have G'ieber  
21 Fund invest in CCC was made by GOTLIEB as managing member of G'IEBER.

22           28.     As CFO of CCC and a member of the board of directors, GOTLIEB had knowledge  
23 of CCC's financial condition. G'ieber Fund, through G'IEBER, under the control of GOTLIEB,  
24 invested in CCC through a series of notes. The promissory notes between G'ieber Fund and CCC  
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26

1 were signed by GOTLIEB as principal of the general partner and Daniel Gotlieb<sup>2</sup>, Chief Operating  
2 Officer of CCC. According to GOTLIEB, CCC required an investment of funds to cover operational  
3 expenses, including salary expenses.

4 29. On or about September 27, 2001, G'ieber Fund lent CCC \$50,000 evidenced by a  
5 promissory note. The note was for a term of 30 days at 12% annualized rate. CCC was to pay the  
6 principal and the interest back to G'ieber Fund on or before October 29, 2001.

7 30. CCC did not pay the note due on October 29, 2001.

8 31. Even though the first note was in default, on November 28, 2001, G'ieber Fund lent  
9 an additional \$90,000 to CCC. A promissory note was executed between G'ieber Fund and CCC.  
10 The principal was due on December 31, 2001. According to GOTLIEB, CCC was in significant  
11 financial trouble at this point.

12 32. On or about December 1, 2001, CCC held a Board of Directors meeting at which  
13 GOTLIEB was present. At the meeting, all board members agreed that CCC was in financial crisis.

14 33. At this time, GOTLIEB proposed converting the G'ieber Fund notes totaling  
15 \$140,000 to CCC stock or alternatively, to close down CCC and pay G'ieber Fund the funds owed.

16 34. With the prior two notes in default, on December 14, 2001, G'ieber Fund lent an  
17 additional \$13,000 to CCC through another promissory note. According to GOTLIEB, CCC needed  
18 to pay rent. The note was due on December 31, 2001. As of December 14, 2001, the September 27,  
19 2001 note had not been paid.

20 35. At the time of a December 29, 2001 CCC special shareholders meeting, G'ieber  
21 Fund held \$153,000 in due or delinquent notes from CCC. GOTLIEB's company American  
22 Impound Tax Services ("AITS") held an outstanding note from CCC in the amount of \$7,000.

23 36. On January 2, 2002, G'ieber Fund sent a notice of delinquency to CCC.  
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26 <sup>2</sup> David Gotlieb's brother.

1           37.     With the prior notes in default, on January 14, 2002, G'ieber Fund lent an additional  
2 \$50,000 to CCC evidenced by a promissory note. The term of the note was fifteen days. CCC was  
3 to fund operations with the \$50,000.

4           38.     Even though the prior notes were in default, on January 14, 2002, G'ieber Fund  
5 issued a line of credit to CCC in the amount of \$1,000,000. At the time the line of credit was  
6 opened, CCC was delinquent on the previous promissory notes issued by G'ieber Fund.

7           39.     On or about January 17, 2002, CCC held a special shareholder's meeting. At this  
8 meeting, GOTLIEB disclosed to the board that CCC would have a negative net worth as of  
9 December 31, 2001 if the current notes payable were not converted to stock or paid off. The current  
10 notes payable amounted to \$153,000 to G'ieber Fund and \$7,000 to AITS.

11          40.     On or about January 11, 2002 G'ieber Fund obtained a loan from Wells Fargo in the  
12 amount of \$42,000. The loan was guaranteed by G'IEBER. On or about December 21, 2001,  
13 G'ieber Fund had placed \$42,000 into a certificate of deposit with restricted access to secure the  
14 loan subsequently obtained by G'ieber Fund.

15          41.     At the January 17, 2002 special shareholder's meeting, a proposal by G'IEBER  
16 through GOTLIEB was made to the CCC board. The proposal included that G'IEBER would  
17 purchase and lease to CCC an information system including WAN and email. The lease was for 36  
18 months at 18% interest with a \$1.00 buy out option at the end of the lease. A leasing contract was to  
19 be signed by CCC and G'IEBER.

20          42.     On or about January 22, 2002, Wells Fargo transferred \$42,000 into G'ieber Fund's  
21 account. Upon information and belief, on or about January 31, 2002, G'ieber Fund transferred  
22 \$41,303.58 to a JP Morgan Chase account for the purchase of an information system for CCC. CCC  
23 then made only two online transfers to G'ieber Fund bank accounts in the amount of \$1,493.22 with  
24 references to "lease for Dell". G'ieber Fund paid the monthly payments to Wells Fargo on the loan.

25          43.     GOTLIEB closed down CCC in early 2003. GOTLIEB turned in the mortgage  
26 broker license held by CCC to the Department of Financial Institutions in January of 2003.



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## LICENSING STATUS

48. G'IEBER's application for licensure as an investment adviser in Arizona remains incomplete. G'IEBER failed to provide the Division with information required to complete the application.

49. GOTLIEB's application for licensure as an investment adviser representative in Arizona is incomplete. GOTLIEB failed to provide the Division with information required to complete the application.

50. The Securities Division requested additional information be provided to address certain issues that arose in the RESPONDENTS' applications. RESPONDENTS failed to provide responses to the Securities Division's request.

51. RESPONDENTS G'IEBER and GOTLIEB failed to disclose to the limited partners of G'ieber Fund that GOTLIEB was a director, recording secretary and CFO of CCC and as director, recording secretary and CFO had knowledge of the financial condition of CCC.

52. RESPONDENTS G'IEBER and GOTLIEB failed to disclose to investors that GOTLIEB benefited from the investments G'ieber Fund made in CCC by receiving a salary that was paid with the investments made by G'ieber Fund.

53. RESPONDENTS G'IEBER and GOTLIEB failed to disclose to investors that GOTLIEB used G'ieber Fund monies to fund investments in the name of GOTLIEB and his spouse, STACEY SCIBELLI-GOTLIEB.

54. RESPONDENT G'IEBER failed to have an independent certified public accountant verify all client funds and securities by actual examination at least once during each calendar year without notice.

55. RESPONDENT G'IEBER failed to have an independent certified public accountant file a copy of the auditor's report and financial statements with the Commission within 30 days after the completion of the examination along with a letter stating that they examined the funds and securities and describing the nature and extend of the examination.

## II.

## CONCLUSIONS OF LAW

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2  
3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
4 Arizona Constitution and the Investment Management Act.

5 2. Respondents violated A.R.S. § 44-3151 by transacting business in this state as  
6 investment advisers or investment adviser representatives while neither licensed nor exempt.

7 3. RESPONDENTS G'IEBER's and GOTLIEB's conduct is grounds to deny their  
8 applications as an investment adviser and investment adviser representative with the Commission  
9 pursuant to A.R.S. § 44-3201. Specifically, denial of RESPONDENTS G'IEBER's and GOTLIEB's  
10 applications would be in the public interest.

11 a. RESPONDENTS G'IEBER's and GOTLIEB's applications for licensure are  
12 incomplete, inaccurate or misleading within the meaning of A.R.S. §44-  
13 3201(A)(1). RESPONDENTS have failed to provide documents that were  
14 requested.

15 b. RESPONDENT G'IEBER is insolvent or is in an unsound financial condition  
16 within the meaning of A.R.S. §44-3201(A)(2).

17 c. RESPONDENTS G'IEBER and GOTLIEB have violated the Investment  
18 Management Act and Rules by continuing to provide financial advice for  
19 compensation without being licensed within the meaning of A.R.S. §44-  
20 3201(A)(3).

21 d. RESPONDENTS G'IEBER and GOTLIEB failed to file with the Commission  
22 all information required under the IM Act and Rules and refused to permit an  
23 examination within the meaning of A.R.S. §44-3201(A)(4) by failing to provide  
24 requested documentation or provide responses to subpoenas specifically related  
25 to the use of limited partners' funds pursuant to A.R.S. §44-3132(2).  
26

1 e. RESPONDENT G'IEBER knowingly retained an unlicensed investment  
2 adviser representative within the meaning of A.R.S. §44-3201(A)(5).  
3 GOTLIEB is not a licensed investment adviser representative in the state of  
4 Arizona.

5 f. RESPONDENT G'IEBER permitted RESPONDENT GOTLIEB to render  
6 investment advice in violation of the Investment Management Act and Rules  
7 within the meaning of A.R.S. §44-3201(A)(6).

8 g. RESPONDENTS G'IEBER and GOTLIEB engaged in dishonest or unethical  
9 practices in the securities industry within the meaning of A.R.S. §44-  
10 3201(A)(13) including but not limited to:

11 i. Refusing to allow or otherwise impeding the Commission from  
12 conducting an investigation or examination under the IM Act or any  
13 rule adopted thereunder within the meaning of R14-6-203(1) by failing  
14 to provide, as requested and subpoenaed, detailed financial information  
15 related to use of limited partners' funds including but not limited to cash  
16 receipts journals, cash disbursement journals, general ledgers, bank  
17 statements; and documents showing the calculations for management  
18 and incentive fees.

19 ii. Failing to disclose conflicts of interest that impaired the rendering of  
20 unbiased and objective advice to the detriment of the partners within the  
21 meaning of R14-6-203(11).

22 1. RESPONDENTS violated their fiduciary duty as adviser to  
23 G'ieber Fund by failing to make full and fair disclosure of all  
24 material facts including but not limited to GOTLIEB's  
25 relationship with CCC.  
26

1                   2. RESPONDENTS further violated their fiduciary duty to the  
2                   G'ieber Fund by using the assets of G'ieber Fund to further  
3                   benefit their own interests including but not limited to using  
4                   G'ieber Fund assets to purchase equipment for CCC and having  
5                   assets of G'ieber Fund placed in GOTLIEB's name.

6                   4.       RESPONDENTS G'IEBER's and GOTLIEB's conduct is grounds for an order of  
7                   restitution and to assess administrative penalties pursuant to A.R.S. § 44-3201(B). Specifically:

8                   a.       RESPONDENT G'IEBER rendered investment advice in Arizona without  
9                   being licensed within the meaning of under A.R.S. §44-3201(A)(6).

10                  b.       RESPONDENTS G'IEBER and GOTLIEB Engaged in dishonest or unethical  
11                  practices in the securities industry within the meaning of A.R.S. §44-  
12                  3201(A)(13), specifically,

13                    i.       Refusing to allow or otherwise impeding the Commission from  
14                    conducting an investigation or examination under the IM Act or any  
15                    rule adopted thereunder pursuant to A.R.S. §44-3132(2) by failing to  
16                    provide, as requested, detailed financial information related to use of  
17                    limited partners' funds including but not limited to cash receipts  
18                    journals, cash disbursements journals, general ledgers, bank statements,  
19                    and documents showing the calculations for management and incentive  
20                    fees.

21                    ii.       Failing to disclose a conflict of interest that impaired the rendering of  
22                    unbiased and objective advice to the detriment of the partners within the  
23                    meaning of R14-6-203(11).

24                  5.       Respondents violated A.R.S. § 44-3241 by (a) employing a device, scheme, or  
25                  artifice to defraud, (b) making untrue statements or misleading omissions of material facts, (c)  
26                  misrepresenting professional qualifications with the intent that the misrepresentation be relied on,

1 and/or (d) engaging in transactions, practices, or courses of business that operate or would operate  
2 as a fraud or deceit.

3 a. RESPONDENT G'IEBER failed to have an independent certified public  
4 accountant verify all client funds and securities by actual examination at least  
5 once during each calendar year without notice as defined by A.A.C. R14-6-  
6 206(A)(4)(b)(i).

7 b. RESPONDENT G'IEBER failed to have an independent certified public  
8 accountant file a copy of the auditor's report and financial statements with the  
9 Commission within 30 days after the completion of the examination along with  
10 a letter stating that they examined the funds and securities and describing the  
11 nature and extent of the examination as defined by A.A.C. R14-6-  
12 206(A)(4)(b)(ii).

13 c. RESPONDENTS G'IEBER and GOTLIEB failed to disclose all material  
14 conflicts of interest of GOTLIEB including but not limited to:

15 i) Failing to disclose that GOTLIEB was a director, recording secretary  
16 and CFO of CCC and as director, recording secretary and CFO had  
17 knowledge of the financial condition of CCC.

18 ii) Failing to disclose to investors that GOTLIEB benefited from the  
19 investments G'ieber Fund made in CCC by receiving a salary that was  
20 paid with the investments funds raised by G'ieber Fund.

21 d. RESPONDENTS G'IEBER and GOTLIEB failed to disclose to investors that  
22 GOTLIEB used G'ieber Fund monies to fund investments in the name of  
23 GOTLIEB and his spouse, STACEY SCIBELLI-GOTLIEB.

24 6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.  
25 A.R.S. § 44-3292 and A.R.S. § 44-3201.

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**III.****ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-3292 and A.R.S. § 44-3201, that Respondents, and any of Respondents' agents, employees, successors and assigns, permanently cease and desist from violating the Investment Management Act.

IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3292 and A.R.S. § 44-3201, that Respondents and community of the Respondent Spouse shall, jointly and severally, pay restitution to the Commission in the amount of \$1,559,650. Payment shall be made in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. The Commission shall disburse the funds to G'ieber Value Fund. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3296 and A.R.S. § 44-3201, that Respondents and community of the Respondent Spouse shall, jointly and severally, pay an administrative penalty in the amount of \$50,000. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. The payment obligations for these administrative penalties shall be subordinate to any restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondents' default with respect to Respondents' restitution obligations.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that RESPONDENT  
2 G'IEBER's application for licensure as an investment adviser is denied.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that RESPONDENT  
4 GOTLIEB's application for licensure as an investment adviser representative is denied.

5 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that RESPONDENTS notify  
6 all limited partners of G'ieber Value Fund of the existence of this Order within ten days from the  
7 date of this Order. RESPONDENTS shall provide a copy of this Order to all limited partners of  
8 G'ieber Value Fund.

9 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of  
10 default. If any Respondent does not comply with this Order, any outstanding balance may be  
11 deemed in default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this Order, the  
2 Commission may bring further legal proceedings against that Respondent, including application to  
3 the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

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12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
13 Executive Director of the Arizona Corporation  
14 Commission, have hereunto set my hand and caused the  
15 official seal of the Commission to be affixed at the  
16 Capitol, in the City of Phoenix, this \_\_\_\_\_ day of  
17 \_\_\_\_\_, 2008.

18 \_\_\_\_\_  
19 BRIAN C. McNEIL  
20 Executive Director

21  
22 \_\_\_\_\_  
23 DISSENT

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25 \_\_\_\_\_  
26 DISSENT

This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator,  
voice phone number 602-542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov).

(wlc)

**CONSENT TO ENTRY OF ORDER**

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2           1.     Respondent G'IEBER FINANCIAL, LLC admits the jurisdiction of the  
3 Commission over the subject matter of this proceeding. Respondent G'IEBER FINANCIAL, LLC  
4 acknowledges that it has been fully advised of its right to a hearing to present evidence and call  
5 witnesses and it knowingly and voluntarily waives any and all rights to a hearing before the  
6 Commission and all other rights otherwise available under Article 7 of the Investment  
7 Management Act and Title 14 of the Arizona Administrative Code. Respondent G'IEBER  
8 FINANCIAL, LLC acknowledges that the Order to Cease and Desist, Order of Restitution, Order  
9 of Denial, Order for Administrative Penalties and Consent to Same ("Order") constitutes a valid  
10 final order of the Commission.

11           2.     Respondent G'IEBER FINANCIAL, LLC knowingly and voluntarily waives any  
12 right under Article 8 of the Investment Management Act to judicial review by any court by way of  
13 suit, appeal, or extraordinary relief resulting from the entry of this Order.

14           3.     Respondent G'IEBER FINANCIAL, LLC acknowledges and agrees that this Order  
15 is entered into freely and voluntarily and that no promise was made or coercion used to induce  
16 such entry.

17           4.     Respondent G'IEBER FINANCIAL, LLC understands and acknowledges that it has  
18 a right to seek counsel regarding this Order, and that it has had the opportunity to seek counsel  
19 prior to signing this Order. Respondent G'IEBER FINANCIAL, LLC acknowledges and agrees  
20 that, despite the foregoing, it freely and voluntarily waives any and all right to consult or obtain  
21 counsel prior to signing this Order.

22           5.     Respondent G'IEBER FINANCIAL, LLC admits the Findings of Fact and  
23 Conclusions of Law contained in this Order. Respondent G'IEBER FINANCIAL, LLC agrees that  
24 it shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this  
25 Order in any present or future administrative proceeding before the Commission or any other state  
26

1 agency concerning the denial or issuance of any license or registration required by the state to  
2 engage in the practice of any business or profession.

3 6. By consenting to the entry of this Order, Respondent G'IEBER FINANCIAL, LLC  
4 agrees not to take any action or to make, or permit to be made, any public statement denying,  
5 directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the  
6 impression that this Order is without factual basis. Respondent G'IEBER FINANCIAL, LLC will  
7 undertake steps necessary to assure that all of its agents and employees understand and comply  
8 with this agreement.

9 7. While this Order settles this administrative matter between Respondent G'IEBER  
10 FINANCIAL, LLC and the Commission, Respondent G'IEBER FINANCIAL, LLC understands  
11 that this Order does not preclude the Commission from instituting other administrative or civil  
12 proceedings based on violations that are not addressed by this Order.

13 8. Respondent G'IEBER FINANCIAL, LLC understands that this Order does not  
14 preclude the Commission from referring this matter to any governmental agency for  
15 administrative, civil, or criminal proceedings that may be related to the matters addressed by this  
16 Order.

17 9. Respondent G'IEBER FINANCIAL, LLC understands that this Order does not  
18 preclude any other agency or officer of the state of Arizona or its subdivisions from instituting  
19 administrative, civil, or criminal proceedings that may be related to matters addressed by this  
20 Order.

21 10. Respondent G'IEBER FINANCIAL, LLC agrees that it will not apply to the state  
22 of Arizona for registration as a securities dealer or for licensure as an investment adviser at any  
23 time in the future.

24 11. Respondent G'IEBER FINANCIAL, LLC agrees that it will not exercise any  
25 control over any entity that offers or sells securities or provides investment advisory services  
26 within or from Arizona at any time in the future.

1           12.     Respondent G'IEBER FINANCIAL, LLC agrees that it will not sell any securities  
2 in or from Arizona without being properly registered in Arizona as a dealer, or exempt from such  
3 registration; it will not sell any securities in or from Arizona unless the securities are registered in  
4 Arizona or exempt from registration; and it will not transact business in Arizona as an investment  
5 adviser unless properly licensed in Arizona or exempt from licensure.

6           13.     Respondent G'IEBER FINANCIAL, LLC consents to the entry of this Order and  
7 agrees to be fully bound by its terms and conditions.

8           14.     Respondent G'IEBER FINANCIAL, LLC acknowledges and understands that if it  
9 fails to comply with the provisions of the order and this consent, the Commission may bring  
10 further legal proceedings against it, including application to the superior court for an order of  
11 contempt.

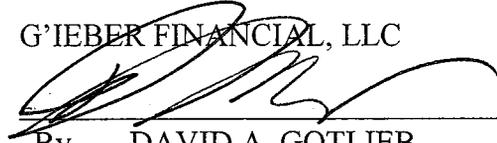
12           15.     Respondent G'IEBER FINANCIAL, LLC understands that default shall render it  
13 liable to the Commission for its costs of collection and interest at the maximum legal rate.

14           16.     Respondent G'IEBER FINANCIAL, LLC agrees and understands that if it fails to  
15 make any payment as required in the Order, any outstanding balance shall be in default and shall  
16 be immediately due and payable without notice or demand. Respondent G'IEBER FINANCIAL,  
17 LLC agrees and understands that acceptance of any partial or late payment by the Commission is  
18 not a waiver of default by Commission.

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1 17. G'IEBER FINANCIAL, LLC represents that DAVID A. GOTLIEB is managing  
2 member of G'IEBER FINANCIAL, LLC and has been authorized by name G'IEBER  
3 FINANCIAL, LLC to enter into this Order for and on behalf of it.

4 G'IEBER FINANCIAL, LLC



5  
6 By DAVID A. GOTLIEB,  
Its Managing Member

7 STATE OF ARIZONA )  
8 ) ss  
County of *Maricopa* )

9 SUBSCRIBED AND SWORN TO BEFORE me this 17th day of March, 2008.

11 Veronica Sandoval  
12 NOTARY PUBLIC

13 My commission expires:

14 9/21/2010



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**CONSENT TO ENTRY OF ORDER**

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2           1.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB, husband  
3 and wife, admit the jurisdiction of the Commission over the subject matter of this proceeding.  
4 Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB acknowledge that they  
5 have been fully advised of their right to a hearing to present evidence and call witnesses and  
6 Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB knowingly and  
7 voluntarily waive any and all rights to a hearing before the Commission and all other rights  
8 otherwise available under Article 7 of the Investment Management Act and Title 14 of the Arizona  
9 Administrative Code. Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
10 acknowledge that this Order to Cease and Desist, Order of Restitution, Order of Denial, Order for  
11 Administrative Penalties and Consent to Same ("Order") constitutes a valid final order of the  
12 Commission.

13           2.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
14 knowingly and voluntarily waive any right under Article 8 of the Investment Management Act to  
15 judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry  
16 of this Order.

17           3.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
18 acknowledge and agree that this Order is entered into freely and voluntarily and that no promise  
19 was made or coercion used to induce such entry.

20           4.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
21 understand and acknowledge that they have a right to seek counsel regarding this Order, and that  
22 they have had the opportunity to seek counsel prior to signing this Order. Respondents DAVID A.  
23 GOTLIEB and STACEY SCIBELLI-GOTLIEB acknowledge and agree that, despite the  
24 foregoing, they freely and voluntarily waive any and all right to consult or obtain counsel prior to  
25 signing this Order.  
26

1           5.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB admit the  
2 Findings of Fact and Conclusions of Law contained in this Order. Respondents DAVID A.  
3 GOTLIEB and STACEY SCIBELLI-GOTLIEB agree that they shall not contest the validity of the  
4 Findings of Fact and Conclusions of Law contained in this Order in any present or future  
5 administrative proceeding before the Commission or any other state agency concerning the denial  
6 or issuance of any license or registration required by the state to engage in the practice of any  
7 business or profession.

8           6.       By consenting to the entry of this Order, Respondents DAVID A. GOTLIEB and  
9 STACEY SCIBELLI-GOTLIEB agree not to take any action or to make, or permit to be made, any  
10 public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this  
11 Order or creating the impression that this Order is without factual basis. Respondents DAVID A.  
12 GOTLIEB and STACEY SCIBELLI-GOTLIEB will undertake steps necessary to assure that all of  
13 their agents and employees understand and comply with this agreement.

14           7.       While this Order settles this administrative matter between Respondents DAVID A.  
15 GOTLIEB, STACEY SCIBELLI-GOTLIEB and the Commission, Respondents DAVID A.  
16 GOTLIEB and STACEY SCIBELLI-GOTLIEB understand that this Order does not preclude the  
17 Commission from instituting other administrative or civil proceedings based on violations that are  
18 not addressed by this Order.

19           8.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
20 understand that this Order does not preclude the Commission from referring this matter to any  
21 governmental agency for administrative, civil, or criminal proceedings that may be related to the  
22 matters addressed by this Order.

23           9.       Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
24 understand that this Order does not preclude any other agency or officer of the state of Arizona or  
25 its subdivisions from instituting administrative, civil, or criminal proceedings that may be related  
26 to matters addressed by this Order.

1           10.     Respondent DAVID A. GOTLIEB agrees that he will not apply to the state of  
2 Arizona for registration as a securities dealer or salesman or for licensure as an investment adviser  
3 or investment adviser representative at any time in the future.

4           11.     Respondent DAVID A. GOTLIEB agrees that he will not exercise any control over  
5 any entity that offers or sells securities or provides investment advisory services within or from  
6 Arizona at any time in the future.

7           12.     Respondent DAVID A. GOTLIEB agrees that he will not sell any securities in or  
8 from Arizona without being properly registered in Arizona as a dealer or salesman, or exempt from  
9 such registration; he will not sell any securities in or from Arizona unless the securities are  
10 registered in Arizona or exempt from registration; and he will not transact business in Arizona as  
11 an investment adviser or an investment adviser representative unless properly licensed in Arizona  
12 or exempt from licensure.

13           13.     Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
14 acknowledge that any restitution or penalties imposed by this Order are obligations of the marital  
15 community.

16           14.     Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB consent  
17 to the entry of this Order and agree to be fully bound by its terms and conditions.

18           15.     Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
19 acknowledge and understand that if they fail to comply with the provisions of the order and this  
20 consent, the Commission may bring further legal proceedings against them, including application  
21 to the superior court for an order of contempt.

22           16.     Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB  
23 understand that default shall render them liable to the Commission for its costs of collection and  
24 interest at the maximum legal rate.

25           17.     Respondents DAVID A. GOTLIEB and STACEY SCIBELLI-GOTLIEB agree and  
26 understand that if they fail to make any payment as required in the Order, any outstanding balance

