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BEFORE THE ARIZONA CORPORATION COMMISSION

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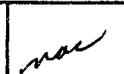
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Respondent.

DOCKET NO. S-03329A-01-0000

**STIPULATION RE:
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
RE: DAVID HITZIG**

Arizona Corporation Commission
DOCKETED

NOV 27 2001

DOCKETED BY 

17 The Securities Division ("Division") of the Arizona Corporation Commission
18 ("Commission"), by and through counsel and Respondent David Hitzig ("HITZIG"), by and
19 through counsel, hereby submit the following Stipulated Facts and Conclusions of Law.

I.

STIPULATED FINDINGS OF FACT

21
22
23 1. DAVID HITZIG ("HITZIG") whose last known address is 634 West Flower, Mesa,
24 Arizona 85202, was at all times relevant, the Statutory Agent, "Cashier" and Authorized Agent for
25 JOHNATHON ROBERTS, INC. ("JOHNATHON ROBERTS"). During the same period of time,
26 HITZIG was the administrator and "Cashier" of EARLY DETECTION CENTERS, INC. ("EDC").
In holding these positions, HITZIG acted as a salesperson on behalf of EDC and JOHNATHON

1 ROBERTS along with PAUL C. WOODCOCK ("WOODCOCK") who was at all times relevant, a
2 "Cashier" for EDC. Both companies had bank accounts in Arizona, on which HITZIG was an
3 authorized signer. Further, during all relevant times, HITZIG was conducting business involving the
4 offer and sale of securities within or from the state of Arizona.

5 2. During the period of January 1997 through November 1997, HITZIG offered for sale
6 and sold securities within or from the state of Arizona in the form of investment contracts issued by
7 EDC through JOHNATHON ROBERTS. JOHNATHON ROBERTS held itself out as a specifically
8 disclosed and authorized agent of EDC. The investments were offered through general solicitations
9 verbally by HITZIG and in the newspaper, in the form of a classified ad. HITZIG was not a registered
10 securities dealer in the state of Arizona. The investment contracts in EDC were not registered for sale
11 in the state of Arizona, nor offered in reliance upon an available exemption from registration, nor
12 pursuant to a notice filing.

13 Investor One

14 3. On or about February 14, 1997, Investor One responded to a newspaper ad
15 regarding an opportunity for an "absentee only" investor. The ad promised a \$144,000 return the
16 first year on an investment of \$100,000. The ad instructed interested investors to call HITZIG at
17 JOHNATHON ROBERTS. On or about February 14, 1997, Investor One met with HITZIG.
18 Before any disclosure was made, HITZIG required Investor One to sign a "Confidentiality and
19 Non-Compete Agreement." After signing, HITZIG disclosed information regarding the EDC
20 investment.

21 4. HITZIG told Investor One that EDC intended to open centers throughout the metro
22 Phoenix area. The centers were designed to conduct tests for the early detection of cancer.
23 HITZIG explained that EDC together with Investor One would form a corporation to operate a
24 medical service business in the state of Arizona. Investor One received a pro forma statement of
25 how the financial return to investors was calculated. It showed that the business would return
26 \$144,000 each year on a \$100,000 investment.

1 5. HITZIG discussed information relating to finances and the locations for centers that
2 EDC intended to open during a second meeting with Investor One. Also discussed was
3 information about cancer testing. Investor One was provided with a document labeled "Proforma"
4 that listed the expected operating costs and profits.

5 6. Investor One and EDC entered into an Agreement of Incorporation ("Agreement")
6 on March 27, 1997. At that time, Investor One provided a \$100,000 check made payable to EDC.
7 HITZIG accepted the check. Investor One understood that the money was to be put into escrow and
8 used to finance the opening of the first EDC center. In fact, the money was not put into escrow, but
9 deposited into an EDC bank account at Norwest Bank.

10 7. HITZIG signed the Agreement as an agent for JOHNATHON ROBERTS on behalf of
11 and with the consent of EDC. The Agreement required Investor One and EDC to form a corporation
12 under which they would operate a medical service business. The corporation had to be formed within
13 30 days of the execution date of Agreement. The Agreement required Investor One to pay a "fee" of
14 \$100,000 to EDC for 50% ownership in the business. The Agreement specified that EDC would
15 provide all necessary equipment, personnel contracts and cover expenses of the center for the first four
16 months of operation. From the fifth month on, EDC would pay all expenses other than advertising
17 and telephone, which would be expenses shared between Investor One and EDC.

18 8. The Agreement provided Investor One with the right to demand that the contract
19 become void if a center was not in place before 45 days following the close. This was a clause
20 Investor One required in the Agreement. The close date was the date the Agreement was signed,
21 March 27, 1997. HITZIG requested an addendum to the Agreement in April, to extend the date for
22 the opening of the center. The document, entitled "Addendum to Purchase Contract," specifies that a
23 corporation was formed according to the terms of the Agreement, and that the filing of the corporation
24 was postponed so an exact address could be determined. In addition, EDC and Investor One agreed to
25 extend the opening date of the center by fifteen days to consider an alternate location for the center.
26

1 HITZIG signed the addendum as agent of JOHNATHON ROBERTS on behalf of and with the
2 consent of EDC.

3 9. On May 6, 1997, both parties signed another addendum to the Agreement. The May
4 addendum specifies that the center would be located in Mesa and that the center would open on or
5 before June 16, 1997. HITZIG signed the addendum as agent of JOHNATHON ROBERTS on
6 behalf of and with the consent of EDC. Investor One made the investment in reliance on
7 representations and agreements set forth in the information provided by HITZIG.

8 10. The center did not open. Investor One insisted the contract had become void and
9 demanded repayment of his \$100,000 investment. HITZIG refused to refund the \$100,000
10 investment. No money was ever refunded.

11 11. HITZIG failed to provide a disclosure document and failed to provide essential
12 information regarding the offering. Information withheld included, but was not limited to, risk factors,
13 capitalization, plan of distribution, actual use of proceeds, federal tax aspects, and redemptions. The
14 offering did not include materials disclosing information about the officers and key personnel of either
15 EDC or JOHNATHON ROBERTS, directors of either company, or principal stockholders.

16 Investor Two

17 12. In or about March 1997, Investor Two's son saw an ad in the newspaper regarding
18 the sale of a chiropractic clinic. He called about the clinic and arranged a meeting with HITZIG to
19 discuss the purchase of the clinic. The meeting occurred in approximately March 1997 at the
20 office of JOHNATHON ROBERTS. Investor Two's son did not purchase the clinic but did
21 receive a telephone call approximately one month later from HITZIG regarding an investment in
22 EDC. HITZIG said that EDC would offer a good return on an investment. HITZIG explained that
23 the minimum investment was \$50,000 and one investor from Mesa had already invested. Investor
24 Two's son contacted his father (Investor Two) and mother.

25 13. In or about May 1997, Investor Two met with HITZIG and another EDC
26 representative, at the office of JOHNATHON ROBERTS. Investor Two was told about the EDC

1 offering including the claim that EDC would have locations in Scottsdale, Mesa, Sun City, Phoenix
2 and possibly one additional, unnamed location. Investor Two could choose any location he
3 desired.

4 14. HITZIG presented a projection chart that predicted EDC would perform 10–15 tests
5 for cancer each day at a cost of \$399 per test. HITZIG told Investor Two that he would receive
6 \$99.75 or 25% of each test. Investor Two understood that he was not required to do any work or
7 be involved in the management of EDC. All he had to do was stay home and wait for his checks to
8 arrive. HITZIG and another EDC representative told Investor Two that he could make a minimum
9 profit of \$100,000 during the first year and that investing in EDC was better than investing in the
10 stock market. Risks associated with the investment were never discussed.

11 15. A second meeting occurred on or about May 7, 1997. This was approximately a
12 week to a week and a half after the first meeting. Investor Two wrote a check for \$10,000 to EDC
13 from his personal savings account. He gave the check to HITZIG, which was later deposited into
14 the EDC bank account at Norwest Bank. HITZIG drafted an Agreement to Incorporate
15 (“Agreement”) on his personal computer.

16 16. The Agreement is the same as the one entered into by Investor One, with the
17 following distinctions. Investor Two would own 25% of the shares, EDC would own 50% and an
18 investor to be named at a later date would own 25%. The Agreement with Investor Two does not
19 include the first right of refusal to purchase each new location (Section 2.1, of Investor One’s
20 Agreement) and does not include the right to demand the contract become void if a center is not in
21 place on or before 45 days following the close (Section 3.3, of Investor One’s Agreement). Exhibit
22 “A” to Investor Two’s Agreement specified that the EDC center would be located in Sun City,
23 Arizona and that the planned opening date for this center was June 16, 1997.

24 17. As with the Agreement entered by Investor One, HITZIG signed the Agreement as
25 an agent for JOHNATHON ROBERTS on behalf of and with the consent of EDC. The Agreement
26 required Investor Two and EDC to form a corporation under which they would operate a medical

1 service business. The corporation had to be formed within 30 days of May 7, 1997, the execution
2 date of the Agreement. The Agreement required Investor Two to pay a "fee" of \$50,000 to EDC
3 for 25% ownership in the business. The Agreement specified that EDC would provide all
4 necessary equipment, personnel contracts and cover expenses of the center for the first four months
5 of operation. From the fifth month on, EDC would pay all expenses other than advertising and
6 telephone, which would be expenses shared between Investor Two and EDC. Investor Two made
7 the investment in reliance on representations and agreements set forth in the information provided by
8 HITZIG.

9 18. HITZIG told Investor Two's son that if he referred anyone who made an investment
10 in EDC, HITZIG would pay a referral fee. An investment of \$50,000 paid a 5% referral fee. A
11 \$100,000 investment would earn a 10% referral fee.

12 19. HITZIG omitted or otherwise failed to disclose that all testing would be performed
13 by outside laboratories.

14 20. On May 22, 1997, Investor Two wrote a second personal check of \$40,000 payable
15 to EDC. The money was from an individual retirement account. The check was deposited into the
16 EDC account at Norwest Bank. HITZIG was a signatory on this account.

17 21. HITZIG told Investor Two that the EDC clinic would be up and running within two
18 months. When two months passed and the center did not open, Investor Two began to ask
19 questions. HITZIG and another EDC representative, gave Investor Two different excuses for
20 failure to open the clinic. Finally, on January 18, 1998, HITZIG told Investor Two that EDC had
21 been dissolved on November 21, 1997, due to a lack of business.

22 22. HITZIG failed to tell Investor Two that the original Agreement with Investor One to
23 open a clinic had to be amended twice because the scheduled date of the opening could not be
24 complied with. Investor One had an addendum May 6, 1997, requiring a clinic to open on or
25 before June 16, 1997. HITZIG took money from Investor Two on May 7, 1997, and May 22,
26 1997, without telling Investor Two about the unopened clinic.

1 23. HITZIG failed to provide Investor Two with a disclosure document and failed to
2 provide essential information regarding the offering. Information withheld included, but was not
3 limited to, risk factors, capitalization, plan of distribution, actual use of proceeds, federal tax
4 aspects, and redemptions. The offering did not include materials disclosing information about the
5 officers and key personnel of either EDC or JOHNATHON ROBERTS, directors of either
6 company, or principal stockholders.

7 24. Investor One claims he was never given a first right of refusal to purchase each new
8 location to be opened in the future. Unknown to Investor One, HITZIG entered into an Agreement
9 to Incorporate with Investor Two.

10 25. EDC did open a clinic in Sun City. EDC made arrangements for two osteopathic
11 doctors to administer a test called the AMAS test at a cost of \$399 per test. The doctors were told
12 that \$200 would be used to cover laboratory costs of testing and \$199 would be split between EDC
13 and the doctor performing the test. The center remained open for approximately six to eight
14 months and 12-20 people visited the center for cancer testing.

15 26. HITZIG provided information regarding profits from each test that was not
16 supported in fact. Investors were told that the cost of each test was \$399. Investor One was told
17 that the expenses included \$242.90 to the laboratory and \$20 to the physician doing the test.
18 Investor One expected a return of 50% of the gross profit of \$136.10, or \$68.05 per test. Investor
19 Two was told his profit would be \$99.75 or 25% of each test. In fact, the doctors hired at the Sun
20 City clinic stated the cost of AMAS testing was approximately \$200 per test, leaving \$199 gross
21 profit that the doctor and EDC would divide, 50% to each of them. The money from the testing
22 conducted at the Sun City clinic was not returned to either Investor.

23 27. Notwithstanding agreements to open clinics with both Investors One and Two's
24 investment, no such clinics were ever opened.

25 28. HITZIG opened a bank account for EDC at Norwest Bank Arizona on March 26,
26 1997. The address for EDC was listed as 634 West Flower Avenue, Mesa, Arizona 85202. This is

1 the residence address for HITZIG and the address listed on his personal bank account. The
2 signatories on the account were HITZIG and another EDC representative.

3 29. A financial analysis shows that of the \$150,000 provided by investors and deposited
4 into the account, approximately 25% was actually spent on a business expense, advertising. The
5 remaining funds were transferred to other entities. Investors were never informed that these other
6 entities would receive funds from EDC, nor were they informed of any role that any of the
7 companies played in the EDC venture.

8 30. HITZIG failed to tell investors about the relationship between EDC and
9 JOHNATHON ROBERTS.

10 31. The funds sent to the JOHNATHON ROBERTS account from the EDC bank
11 account totaled approximately \$29,500. The JOHNATHON ROBERTS bank account, at Norwest
12 Bank in Phoenix, was opened January 10, 1997. The company listed an address at 2150 E.
13 Camelback Road, Scottsdale, Arizona 85251. The signatories on the account included HITZIG.

14 II.

15 STIPULATED CONCLUSIONS OF LAW

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

18 2. HITZIG offered or sold securities within or from Arizona, within the meaning of
19 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

20 3. HITZIG violated A.R.S. § 44-1841 by offering or selling securities that were
21 neither registered nor exempt from registration.

22 4. HITZIG violated A.R.S. § 44-1842 by offering or selling securities while neither
23 registered as dealers or salesmen nor exempt from registration.

24 5. HITZIG violated A.R.S. § 44-1991 by offering or selling securities within or from
25 Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or
26

1 misleading omissions of material facts, and (c) engaging in transactions, practices or courses of
2 business which operate or would operate as a fraud or deceit.

3 6. HITZIGS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
4 2032.

5 7. HITZIGS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
6 2032.

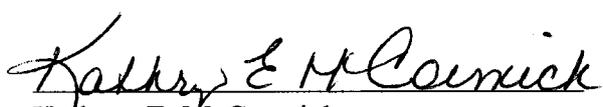
7 8. HITZIGS' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

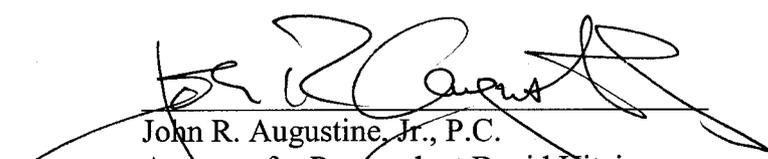
8 **III.**

9 **CONCLUSION**

10 Therefore, the Division and HITZIG hereby submit these Findings of Fact and Conclusions
11 of Law to Administrative Law Judge Dion for his consideration in the adjudication of this matter.
12 By doing so, HITZIG elects to permanently waive his right to a hearing and appeal under Articles
13 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* ("Securities Act") with
14 respect to a finding in this matter.

15 RESPECTFULLY submitted this 27th day of November 2001.

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17 
18 Kathryn E. McCormick
19 Counsel
Arizona Corporation Commission, Securities Division

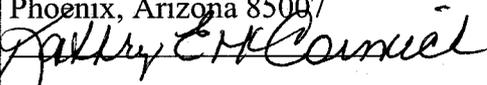
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21 
22 John R. Augustine, Jr., P.C.
23 Attorney for Respondent David Hitzig
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25
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1 ORIGINAL and TEN copies of the foregoing
filed this 27th day of November, 2001 with:

2 DOCKET CONTROL
3 Arizona Corporation Commission
1200 West Washington
4 Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered
this 27th day of November, 2001 to:

6 Administrative Law Judge Phil Dion
1200 West Washington
7 Phoenix, Arizona 85007

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9 Kathryn E. McCormick

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