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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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COMMISSIONERS

2009 MAR -4 P 4: 27

KRISTIN K. MAYES, Chairman
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SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

MAR -4 2009

DOCKETED BY
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In the matter of:)	DOCKET NO. S-20659A-09-0100
DONA KURYANOWICZ, a single woman,)	NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES AND FOR OTHER AFFIRMATIVE ACTION
Respondent.)	
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**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 respondent DONA KURYANOWICZ has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I. JURISDICTION

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

II. RESPONDENT

2. DONA KURYANOWICZ may be referred to as "Respondent."

3. Respondent has, at all times relevant hereto, formally resided in Maricopa County, Arizona.

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1 **III. FACTS**

2 4. Beginning January 2007 and continuing into August 2007, Respondent solicited
3 approximately \$1,895,000 from at least nineteen investors through the offering of an unregistered
4 investment contract.

5 5. Respondent communicated to prospective investors that the investment opportunity
6 involved a form of stock trading known as "channel trading" to be conducted by an individual
7 known as Deborah Cheryl Bennett ("D. Bennett").

8 6. "Channel trading" and "trading channel" both relate to the trading of stock based on
9 the charting of a stock's price. More specifically, when charting the price of a stock, the term
10 "trading channel" refers to the space on the price chart between a stock's support and resistance
11 levels. The price of the stock is expected to stay within the support and resistance levels until a
12 breakout occurs. "Channel trading" refers to the method of trading stocks whereby traders will
13 purchase a stock when its price is near the bottom of the trading channel and sell it when the price
14 gets close to the top of the trading channel, making a profit on the price spread.

15 7. Respondent explained to prospective investors that she would be responsible for
16 gathering investor funds and forwarding them to D. Bennett. Respondent told prospective
17 investors that D. Bennett would then deposit investor funds into a Charles Schwab trading account
18 from which D. Bennett would conduct channel trading of stocks.

19 8. Respondent and D. Bennett agreed that all investment returns would be paid by D.
20 Bennett to Respondent who would then be responsible for distributing the returns to the various
21 investors who had deposited funds with Respondent.

22 9. The returns promised to investors by Respondent varied over time, but included
23 promises in some instances of 20-30% monthly, plus periodic bonuses.

24 10. Respondent conveyed to prospective investors that she had known D. Bennett for
25 forty years and that D. Bennett had been very successful trading stocks, was personally
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1 guaranteeing the funds invested and assuring Respondent that investors could not lose their
2 principal.

3 11. At all times relevant, the investors who deposited funds with Respondent for
4 investment with D. Bennett relied on Respondent for information related to the details of the
5 investment and D. Bennett's qualifications as a stock trader.

6 12. Respondent never requested nor did she ever receive any information to confirm
7 whether D. Bennett possessed any qualifications to trade stocks or whether she had, in fact, been
8 successful trading stocks.

9 13. Respondent did not take any action to confirm whether D. Bennett possessed the
10 financial capacity to guarantee the funds being invested by Respondent on behalf of others.

11 14. Respondent did not take any action to confirm whether D. Bennett was depositing
12 the funds she received from Respondent into the Charles Schwab trading account.

13 15. Beginning January 2007, Respondent began receiving funds from investors. The
14 funds received from investors were deposited into Respondent's personal checking account.
15 Respondent then transferred investors' funds to D. Bennett. Respondent received investment
16 returns from D. Bennett in the amount of \$995,000. Of this amount, Respondent paid herself
17 approximately \$219,000 resulting in a return on her \$92,000 investment of approximately
18 \$127,000.

19 16. There was no formula employed by Respondent to allocate to investors the portion
20 they were to receive, if any, of the investment returns paid by D. Bennett. Several investors
21 received no return on their investment and all but two investors who invested through Respondent
22 received back less than the principal amount they invested.

23 17. Beginning in 2006 and continuing through September 2007, D. Bennett received
24 \$10,637,500 from investors, inclusive of the approximately \$1,895,000 forwarded by Respondent
25 to D. Bennett.

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1 18. D. Bennett failed to deposit into the Charles Schwab trading account approximately
2 \$4,000,000 of the total funds she received and utilized amounts she received for her personal use or
3 benefit.

4 19. D. Bennett sustained approximately \$1,000,000 of losses in her attempts made at
5 trading stocks.

6 20. D. Bennett and Respondent have never been registered as securities salespersons in
7 Arizona.

8 **IV. VIOLATION OF A.R.S. § 44-1841**

9 **(Offer or Sale of Unregistered Securities)**

10 21. From January 2007, Respondent offered or sold securities in the form of investment
11 contracts within or from Arizona.

12 22. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
13 Securities Act.

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

15 **V. VIOLATION OF A.R.S. § 44-1842**

16 **(Transactions by Unregistered Dealers or Salesmen)**

17 24. Respondent offered or sold securities within or from Arizona while not registered as
18 a salesman pursuant to Article 9 of the Securities Act.

19 25. This conduct violates A.R.S. § 44-1842.

20 **VI. VIOLATION OF A.R.S. § 44-1991**

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

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

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

3 a) Failing to disclose to prospective investors that she had never sought
4 information to confirm whether D. Bennett possessed the qualifications to trade stocks or whether
5 she had, in fact, been successful trading stocks; and

6 b) Failing to disclose to prospective investors that she had not taken any action to
7 confirm whether D. Bennett possessed the financial capacity to guarantee the funds being deposited
8 by Respondent with D. Bennett on behalf of others; and

9 c) Failing to disclose to investors who invested through Respondent with D.
10 Bennett that Respondent was paying herself significant returns on her own investment and paying
11 little, if any, of the promised returns to the investors who had invested their funds with Respondent;

12 27. This conduct violates A.R.S. § 44-1991.

13 **VII. REQUESTED RELIEF**

14 The Division requests that the Commission grant the following relief:

15 1. Order Respondent to permanently cease and desist from violating the Securities Act,
16 pursuant to A.R.S. § 44-2032;

17 2. Order Respondent to take affirmative action to correct the conditions resulting from
18 Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to
19 A.R.S. § 44-2032;

20 3. Order Respondent to pay the state of Arizona administrative penalties of up to five
21 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and

22 4. Order any other relief that the Commission deems appropriate.

23 **VIII. HEARING OPPORTUNITY**

24 Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-
25 306. **If Respondent requests a hearing, Respondent must also answer this Notice.** A request for
26 hearing must be in writing and received by the Commission within 10 business days after service of

1 this Notice of Opportunity for Hearing. Respondent must deliver or mail the request to Docket
2 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing
3 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
4 Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

5 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
6 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
7 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
8 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
9 Opportunity for Hearing.

10 Persons with a disability may request a reasonable accommodation such as a sign language
11 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
12 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
13 Requests should be made as early as possible to allow time to arrange the accommodation.

14 **IX. ANSWER REQUIREMENT**

15 Pursuant to A.A.C. R14-4-305, if Respondent requests a hearing, the requesting respondent
16 must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control,
17 Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30
18 calendar days after the date of service of this Notice. Filing instructions may be obtained from
19 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
20 <http://www.azcc.gov/divisions/hearings/docket.asp>.

21 Additionally, the answering respondent must serve the Answer upon the Division.
22 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
23 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
24 Arizona, 85007, addressed to William W. Black.

25 The Answer shall contain an admission or denial of each allegation in this Notice and the
26 original signature of the answering respondent or respondent's attorney. A statement of a lack of

1 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
2 not denied shall be considered admitted.

3 When the answering respondent intends in good faith to deny only a part or a qualification
4 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
5 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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

8 Dated this 4th day of March, 2009.

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11 Mark Dinell
12 Assistant Director of Securities
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