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COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

MAR - 5 2009

AZ CORP COMMISSION
DOCKET CONTROL

2009 MAR - 5 A 10: 20

RECEIVED

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

DOCKETED BY *[Signature]*

DATE: March 2, 2009

RE: Randie and Leila Balbas, husband and wife, S-20632A-08-0504

CC: Michael P. Kearns, Interim Executive Director

The matter before you is a Proposed Consent with Respondent Randie Balbas and his spouse, Leila Balbas. On September 30, 2008, the Securities Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution for Administrative Penalties and For Other Affirmative Action ("Notice") against Randie Balbas and Leila Balbas, husband and wife. Respondent Balbas and Mrs. Balbas are located in Mesa, Arizona.

Beginning in about December of 2006, Mr. Balbas began a stock options trading program. Through the stock options trading program Respondent Balbas raised approximately \$398,000. During the same timeframe, Respondent repaid about \$65,000 to investors. Respondent represented to investors that they would earn four percent a month.

Investor funds were initially deposited into Respondent Balbas' personal account and then some of the funds were transferred to the trading account. The funds that remained in the personal account were used for purpose other than options trading.

Respondent Balbas was not registered to offer or sell securities within or from the state of Arizona. Further, the securities were not registered nor met any exemptions from registration.

According to the proposed consent, Respondent Balbas will cease and desist from violating the Arizona Securities Act. Further, Respondent Balbas neither admits nor denies the findings of fact and conclusions of law. Respondent Balbas agrees to pay restitution in the amount of \$333,456.72. The restitution amount reflects a credit for the amount repaid to investors. Respondent Balbas agrees to pay an administrative penalty in the amount of \$50,000.

The Securities Division believes this Consent resolves the outstanding issues and is in the best interest of the public.

Originator: Wendy Coy

1 2. LEILA BALBAS was at all relevant times the spouse of Respondent and is joined in
2 this action under A.R.S. § 44-3291(C) solely for purposes of determining the liability of the marital
3 community. At all relevant times, Respondent was acting for his own benefit and for the benefit or in
4 furtherance of the marital community.

5 3. In or about December of 2006, Respondent, while located in Mesa, Arizona, began
6 raising money from investors in Arizona and other states, to invest in Respondent's stock option
7 trading business. Between December of 2006 and January of 2008, Respondent raised about
8 \$398,495.00 from approximately eleven investors through the issuance of promissory notes.
9 Between June of 2007 through June of 2008, Respondent made payments to the investors totaling
10 \$65,038.00. The funds raised from investors were to be placed in a stock options trading program
11 controlled by Respondent.

12 4. In February of 2006, Respondent opened a personal OptionsXpress trading account.
13 In about December of 2006, Respondent began speaking with potential investors about his options
14 trading program. Respondent represented to some potential investors that he already had a number
15 of investors who had invested money in the program. At this time, Respondent stated that he was
16 seeking more investors to invest in his stock options trading program in order to have additional
17 investment capital to trade stock options. Respondent told potential investors that their funds
18 would be used in Respondent's options trading program.

19 5. In one instance, Respondent told a potential investor that he would take their
20 money, trade options and the investor would earn four percent a month. Respondent showed the
21 potential investor, both on paper and on the computer, how the Respondent made money and that
22 that Respondent "guaranteed the monies" invested and stated the investment a "win-win situation."

23 6. Once the investor agreed to invest in the options trading program, the investors
24 signed Personal Loan Agreements with Respondent. The Personal Loan Agreements listed the
25 terms of the agreement. The investment was to last twelve months. After the twelve months, the
26 investors were able to request their principal be paid in full. According to the Personal Loan

1 Agreements, Respondent was to make monthly interest payments to the investors of four percent
2 per month on the funds placed with him.

3 7. In about September or October of 2007, some of the investors inquired how their
4 investments were doing and questioned whether they should invest more money in the options
5 trading program. Respondent stated that the investment was doing very well. After receiving
6 Respondent's response, those investors invested additional funds into the trading program. These
7 investment funds were not deposited into the OptionsXpress trading account controlled by
8 Respondent.

9 8. The investor funds were initially deposited into Respondent's personal bank
10 accounts. Then, Respondent transferred some of the investors' funds to his OptionsXpress trading
11 account. The remaining funds stayed in Respondent's personal bank accounts and were used for
12 purposes other than options trading.

13 9. On about January 11, 2008, Respondent notified investors that his personal finances
14 and the trading account were close to bankruptcy and he could not repay the investors' money.

15 10. Respondent misrepresented to offerees and investors that the investment would pay
16 a promised 48% yearly return.

17 11. Respondent misrepresented to offerees and investors that the investment funds
18 would be used in the options trading program when, in fact, not all the investors' funds were
19 placed into the trading account.

20 12. Respondent failed to disclose to offerees and investors the potential risk of losing
21 the investors' funds due to the market and trading activities.

22 II.

23 CONCLUSIONS OF LAW

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

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

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

5 4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither
6 registered as dealer or salesman nor exempt from registration.

7 5. Respondent violated A.R.S. § 44-1991(b) by making untrue statements or
8 misleading omissions of material facts.

9 a. Respondent misrepresented to offerees and investors that the investment would pay
10 a promised 48% yearly return.

11 b. Respondent misrepresented to offerees and investors that the investment funds
12 would be used in the options trading program when, in fact, not all the investors'
13 funds were placed into the trading account.

14 c. Respondent failed to disclose to offerees and investors the potential risk of losing
15 the investors' funds due to the market and trading activities.

16 6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
17 2032.

18 7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
19 2032.

20 8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

21 9. Respondent acted for the benefit of his marital community and, pursuant to A.R.S. §§
22 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of the
23 community.

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III.**ORDER**

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

7 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
8 agents, employees, successors and assigns, permanently cease and desist from violating the
9 Securities Act.

10 IT IS FURTHER ORDERED that Respondent and LEILA BALBAS comply with the
11 attached Consent to Entry of Order.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent and the
13 marital community of RANDIE BALBAS and LEILA BALBAS jointly and severally, pay
14 restitution to the Commission in the amount of \$333,457.00. Respondent shall be entitled to
15 receive a credit toward the restitution amount for all payments made by Respondent directly to the
16 investors shown on the records of the Commission. It shall be the sole responsibility of
17 Respondent to provide all information and documentation deemed satisfactory to the Commission
18 in order to verify that said payments have been made. Payment shall be made in full on the date of
19 this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the
20 date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed
21 in an interest-bearing account controlled by the Commission. The Commission shall disburse the
22 funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution
23 funds that the Commission cannot disburse because an investor refuses to accept such payment
24 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
25 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
26 disburse shall be transferred to the general fund of the state of Arizona.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent and the
2 marital community of RANDIE BALBAS and LEILA BALBAS shall, jointly and severally, pay
3 an administrative penalty in the amount of \$50,000. Payment shall be made to the “State of
4 Arizona.” Any amount outstanding shall accrue interest at the rate of 10% per annum from the
5 date of this Order until paid in full. The payment obligations for these administrative penalties
6 shall be subordinate to any restitution obligations ordered herein and shall become immediately
7 due and payable only after restitution payments have been paid in full or upon Respondent’s
8 default with respect to Respondent’s restitution obligations.

9 IT IS FURTHER ORDERED that the respective marital community of Respondent and
10 LEILA BALBAS are subject to this Order of restitution and administrative penalties.

11 For purposes of this Order, a bankruptcy filing by Respondent and/or LEILA BALBAS
12 shall be an act of default. If Respondent and/or LEILA BALBAS do not comply with this Order,
13 any outstanding balance may be deemed in default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if Respondent and/or LEILA BALBAS fail to comply
2 with this order, the Commission may bring further legal proceedings against Respondent and/or
3 LEILA BALBAS, including application to 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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CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
Interim Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this _____ day of
_____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(wlc)

CONSENT TO ENTRY OF ORDER

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2 1. Respondent RANDIE BALBAS and LEILA BALBAS, husband and wife, admit
3 the jurisdiction of the Commission over the subject matter of this proceeding. Respondent
4 RANDIE BALBAS and LEILA BALBAS acknowledge that they have been fully advised of their
5 right to a hearing to present evidence and call witnesses and Respondent RANDIE BALBAS and
6 LEILA BALBAS knowingly and voluntarily waive any and all rights to a hearing before the
7 Commission and all other rights otherwise available under Article 11 of the Securities Act and
8 Title 14 of the Arizona Administrative Code. Respondent RANDIE BALBAS and LEILA
9 BALBAS acknowledge that this Order To Cease And Desist, Order of Restitution, Order for
10 Administrative Penalties and Consent to Same ("Order") constitute a valid final order of the
11 Commission.

12 2. Respondent RANDIE BALBAS and LEILA BALBAS knowingly and voluntarily
13 waive any right under Article 12 of the Securities Act to judicial review by any court by way of
14 suit, appeal, or extraordinary relief resulting from the entry of this Order.

15 3. Respondent RANDIE BALBAS and LEILA BALBAS acknowledge and agree that
16 this Order is entered into freely and voluntarily and that no promise was made or coercion used to
17 induce such entry.

18 4. Respondent RANDIE BALBAS and LEILA BALBAS have been represented by an
19 attorney in this matter, Respondent RANDIE BALBAS and LEILA BALBAS have reviewed this
20 order with their attorney, Alan Baskin, Esq., and understand all terms it contains. Respondent
21 RANDIE BALBAS and LEILA BALBAS acknowledge that their attorney has apprised them of
22 their rights regarding any conflicts of interest arising from dual representation. Respondent
23 RANDIE BALBAS and LEILA BALBAS acknowledge that they have each given their informed
24 consent to such representation.

25 5. Respondent RANDIE BALBAS and LEILA BALBAS neither admit nor deny the
26 Findings of Fact and Conclusions of Law contained in this Order. Respondent RANDIE BALBAS

1 and LEILA BALBAS agree that they shall not contest the validity of the Findings of Fact and
2 Conclusions of Law contained in this Order in any present or future administrative proceeding
3 before the Commission or any other state agency concerning the denial or issuance of any license
4 or registration required by the state to engage in the practice of any business or profession.

5 6. By consenting to the entry of this Order, Respondent RANDIE BALBAS and
6 LEILA BALBAS agree not to take any action or to make, or permit to be made, any public
7 statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order
8 or creating the impression that this Order is without factual basis. Respondent RANDIE BALBAS
9 and LEILA BALBAS will undertake steps necessary to assure that all of their agents and
10 employees understand and comply with this agreement.

11 7. While this Order settles this administrative matter between Respondent RANDIE
12 BALBAS and LEILA BALBAS and the Commission, they understand that this Order does not
13 preclude the Commission from instituting other administrative or civil proceedings based on
14 violations that are not addressed by this Order.

15 8. Respondent RANDIE BALBAS and LEILA BALBAS understand that this Order
16 does not preclude the Commission from referring this matter to any governmental agency for
17 administrative, civil, or criminal proceedings that may be related to the matters addressed by this
18 Order.

19 9. Respondent RANDIE BALBAS and LEILA BALBAS understand that this Order
20 does not preclude any other agency or officer of the state of Arizona or its subdivisions from
21 instituting administrative, civil, or criminal proceedings that may be related to matters addressed
22 by this Order.

23 10. Respondent RANDIE BALBAS agrees that he will not apply to the state of Arizona
24 for registration as a securities dealer or salesman or for licensure as an investment adviser or
25 investment adviser representative at any time in the future.

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1 11. Respondent RANDIE BALBAS agrees that he will not exercise any control over
2 any entity that offers or sells securities or provides investment advisory services within or from
3 Arizona at any time in the future.

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

10 13. Respondent RANDIE BALBAS and LEILA BALBAS acknowledge that any
11 restitution or penalties imposed by this Order are obligations of the Respondent, individually, as
12 well as the marital community of Respondent RANDIE BALBAS and LEILA BALBAS.

13 14. Respondent RANDIE BALBAS and LEILA BALBAS consent to the entry of this
14 Order and agree to be fully bound by its terms and conditions.

15 15. Respondent RANDIE BALBAS and LEILA BALBAS acknowledge and
16 understand that if they fail to comply with the provisions of the order and this consent, the
17 Commission may bring further legal proceedings against them, including application to the
18 superior court for an order of contempt.

19 16. Respondent RANDIE BALBAS and LEILA BALBAS understand that default shall
20 render them liable to the Commission for its costs of collection and interest at the maximum legal
21 rate.

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1 17. Respondent RANDIE BALBAS and LEILA BALBAS agree and understand that if
2 they fail to make any payment as required in the Order, any outstanding balance shall be in default
3 and shall be immediately due and payable without notice or demand. Respondent RANDIE
4 BALBAS and LEILA BALBAS agree and understand that acceptance of any partial or late
5 payment by the Commission is not a waiver of default by Commission.

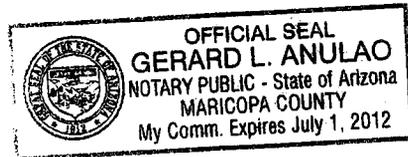
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Respondent RANDIE BALBAS

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10 _____
LEILA BALBAS, spouse of Respondent
RANDIE BALBAS

11 STATE OF ARIZONA)
12) ss
13 County of *Maricopa*)

14 SUBSCRIBED AND SWORN TO BEFORE me this 2nd day of March, 2009.

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16 _____
NOTARY PUBLIC



1 17. Respondent RANDIE BALBAS and LEILA BALBAS agree and understand that if
2 they fail to make any payment as required in the Order, any outstanding balance shall be in default
3 and shall be immediately due and payable without notice or demand. Respondent RANDIE
4 BALBAS and LEILA BALBAS agree and understand that acceptance of any partial or late
5 payment by the Commission is not a waiver of default by Commission.
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Respondent RANDIE BALBAS

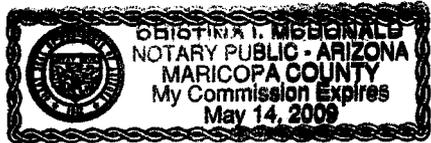
[Handwritten Signature]

LEILA BALBAS, spouse of Respondent
RANDIE BALBAS

11 STATE OF ARIZONA)
12) ss
13 County of *Maricopa*)

14 SUBSCRIBED AND SWORN TO BEFORE me this 3rd day of March, 2009.

[Handwritten Signature]
NOTARY PUBLIC



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