

OPEN MEETING ITEM

8/13/09



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



1300 West Washington, Third Floor  
Phoenix, AZ 85007  
TELEPHONE: (602) 542-4242  
FAX: (602) 544-7470  
E-MAIL: securities@azcc.gov

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission  
DOCKETED

JUL 29 2009

FROM: Matthew J. Neubert *mjn*  
Director of Securities

DOCKETED BY *MJN*

DATE: July 28, 2009

RE: Proposed Order and Consent Regarding Jeffrie Harper and Kathleen Harper  
Docket No. S-20649A-09-0013

CC: Ernest G. Johnson, Executive Director

Please find attached a proposed Order to Cease and Desist, For Restitution, For Administrative Penalty, and Consent to Same ("Order") regarding Jeffrie Harper ("Harper") and Kathleen Harper. Kathleen Harper is named as a part of this action to determine the liability of the marital community.

The Order contains findings that from April 2007 to February 2008 Harper and others sold to investors residing in Arizona \$199,000.00 in securities to raise funds for foreign exchange trading. All of the investor funds were deposited into an account in the name of Knuckleball Capital Management, LLC. Harper used some of the investor funds to repay an investor and withdrew a portion of the investor funds in cash.

Harper neither admits nor denies the findings of fact and conclusions of law. Harper has agreed to cease and desist from violating the Arizona Securities Act, to pay restitution in the amount of \$179,000.00, and to pay an administrative fine in the amount of \$50,000.00.

The Division recommends this Order. The Division believes the Order is appropriate, in the public interest, and necessary for the protection of investors.

Originator: Aikaterine Vervilos



I.

**FINDINGS OF FACT**

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

2. JEFFRIE HARPER (CRD #2863910)(a/k/a Jeff Harper) (“HARPER”) is an individual who at all relevant times resided in Maricopa County, Arizona.

3. KATHLEEN JANICE HARPER was at all relevant times the spouse of HARPER. KATHLEEN JANICE HARPER is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, HARPER was acting for his own benefit and the benefit or in furtherance of HARPER and KATHLEEN JANICE HARPER’s marital community.

5. Knuckleball Capital Management LLC (“Knuckleball”) is an Arizona limited liability company organized on or about May 15, 2007. According to Commission records, HARPER is a member of Knuckleball.

6. According to Commission records, Knuckleball’s primary purpose is currency investing.

7. Beginning in or around April 2007 until in or around February 2008, HARPER and Knuckleball offered and sold securities in the form of investment contracts and/or commodity investment contracts (“Investment(s)”). HARPER and Knuckleball sold at least \$199,000 of the Investments to at least six investors who at all relevant times resided in Arizona. The investors received back \$20,000; therefore, \$179,000 is owed to the investors.

8. HARPER and Knuckleball represented to the investors that the funds would be used to trade in the foreign currency exchange market.

9. HARPER and Knuckleball directed the investors to make their investment monies payable to Knuckleball. Knuckleball received the investor funds and pooled the funds in a bank account controlled by HARPER and Donald Robert Mattson.

1       10. HARPER and Knuckleball told at least one investor that HARPER'S "friend" would  
2 conduct the trading.

3       11. HARPER and Knuckleball promised positive returns to the investors from the efforts of  
4 HARPER and Knuckleball. At least one investor was promised returns of three (3) percent a  
5 month. However, none of the returns materialized.

6       12. HARPER and Knuckleball represented to the investors that their investor funds would  
7 be used for the Investments. None of the investors gave HARPER or Knuckleball authorization to  
8 use the investor funds for any purpose other than investing in the Investments.

9       13. HARPER and Knuckleball failed to tell investors they used the investor funds to repay  
10 other investors and withdraw the funds from the Knuckleball bank account in cash.

11       14. HARPER and Knuckleball represented to investors different levels of risk regarding the  
12 Investments. In at least one instance, an investor was told that the Investment was risky but  
13 lucrative. In another instance, an investor was not told about any risks to the Investment, including  
14 but not limited to, the possibility that the investor may lose all or a large portion of the investment.

15       15. However, a majority of investors who invested with HARPER and Knuckleball lost  
16 their entire investment.

17       16. HARPER and Knuckleball told at least one investor that the Investment was growing  
18 and doing well. This investor made a second Investment based on these statements. However,  
19 HARPER and Knuckleball failed to tell the investor that at the time of the investment the funds  
20 were being used for purposes other than the Investment.

21       17. HARPER failed to disclose that he filed for bankruptcy and voluntarily resigned from his  
22 position as a registered salesman, to wit:

23           a. that on or about December 23, 2004, HARPER and KATHLEEN JANICE HARPER  
24 filed for protection under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy  
25 Court, District of Arizona in the matter entitled *In re Harper*, case no. 2:04-bk-22104-GBN. On  
26 May 20, 2005, HARPER and KATHLEEN JANICE HARPER received a bankruptcy discharge.



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

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

5           5. Respondent violated A.R.S. § 44-1991 by making untrue statements or misleading  
6 omissions of material facts. Respondent's conduct included:

7           a. HARPER provided information regarding potential positive returns to at least one  
8 investor, but failed disclose to at least one investor the risks associated with their investment  
9 including, but not limited to, the possibility that he/she may lose all or a large portion of their  
10 investment;

11           b. HARPER failed to tell at least one investor that on or about December 23, 2004,  
12 HARPER and KATHLEEN JANICE HARPER filed for protection under Chapter 7 of the United  
13 States Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona in the matter entitled In  
14 re Harper, case no. 2:04-bk-22104-GBN. On May 20, 2005, HARPER and KATHLEEN JANICE  
15 HARPER received a bankruptcy discharge;

16           c. HARPER failed to tell at least one investor that HARPER was a registered salesman  
17 who resigned his position during an internal investigation for alleged misconduct. HARPER was a  
18 registered salesman with World Group Securities, Inc. ("WGS") from April 12, 2002 until August  
19 27, 2004. WGI reported on the Central Registration Depository ("CRD") of the Financial Industry  
20 Regulatory Authority, Inc. ("FINRA") that HARPER resigned for borrowing money from a WGI  
21 customer and did not pay it back;

22           d. HARPER misrepresented to at least one investor that the investor would receive  
23 returns of three (3) percent per month when no returns materialized;

24           e. HARPER misrepresented to investors that the funds they invested would be used in  
25 their entirety for the Investments when the investor funds were used to repay other investors and  
26 withdrawn as cash;

1 f. HARPER misrepresented to at least one investor that the Investment was growing  
2 and doing well when the investor funds were used to repay other investors and were withdrawn as  
3 cash; and

4 6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S.  
5 § 44-2032.

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

8 8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-  
9 2036.

10 9. Respondent acted for the benefit of the marital community and, pursuant to A.R.S. §§  
11 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the  
12 community.

13 **III.**

14 **ORDER**

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

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

22 IT IS FURTHER ORDERED that Respondent and Respondent Spouse comply with the  
23 attached Consent to Entry of Order.

24 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, individually,  
25 and the marital community of Respondent and Respondent Spouse, jointly and severally with  
26 Respondents Donald Robert Mattson and Knuckleball Capital Management, LLC under Docket

1 No. S-20649A-09-0013, pay restitution to the Commission in the amount of \$179,000 which  
2 restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal set-offs by the Respondent  
3 and Respondent Spouse and confirmed by the Director of Securities. Respondent and Respondent  
4 Spouse shall provide to the Director of Securities all information and documentation to verify that  
5 such restitution has been paid. Payment shall be made in full on the date of this Order. Any  
6 amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of this  
7 Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an  
8 interest-bearing account controlled by the Commission.

9 The Commission shall disburse the funds on a pro-rata basis to investors shown on the  
10 records of the Commission. Any restitution funds that the Commission cannot disburse because an  
11 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an  
12 investor because the investor is deceased and the Commission cannot reasonably identify and  
13 locate the deceased investor's spouse or natural children surviving at the time of the distribution,  
14 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the  
15 Commission. Any funds that the Commission determines it is unable to or cannot feasibly  
16 disburse shall be transferred to the general fund of the state of Arizona.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent, individually,  
18 and the marital community of Respondent and Respondent Spouse, jointly and severally, shall pay  
19 an administrative penalty in the amount of \$50,000. If the restitution is paid in full within two  
20 years from the date of this Order, then the penalty amount shall be reduced to \$25,000.00.  
21 Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at  
22 the rate of 10 percent per annum from the date of this Order until paid in full. Payment shall be  
23 made in full on the date of this Order. The payment obligations for these administrative penalties  
24 shall be subordinate to any restitution obligations ordered herein and shall become immediately  
25 due and payable only after restitution payments have been paid in full or upon Respondent's or  
26

1 Respondent Spouse's default with respect to Respondent's and Respondent Spouse's restitution  
2 obligations.

3 For purposes of this Order, a bankruptcy filing by Respondent or Respondent Spouse shall  
4 be an act of default. If Respondent or Respondent Spouse does not comply with this Order, any  
5 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 or Respondent Spouse fail to comply  
2 with this order, the Commission may bring further legal proceedings against Respondent or  
3 Respondent Spouse, 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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8 CHAIRMAN COMMISSIONER  
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10 COMMISSIONER COMMISSIONER COMMISSIONER  
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12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
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 \_\_\_\_\_, 2009.

18 ERNEST G. JOHNSON  
19 EXECUTIVE DIRECTOR

20 DISSENT

21  
22 DISSENT

23 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA  
24 Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

25  
26 (AV)

**CONSENT TO ENTRY OF ORDER**

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2           1.     Jeffrie Harper (“Respondent”) and Kathleen Janice Harper (“Respondent Spouse”)  
3 admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondent  
4 and Respondent Spouse acknowledge that Respondent and Respondent Spouse have been fully  
5 advised of their rights to a hearing to present evidence and call witnesses and Respondent and  
6 Respondent Spouse 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 and Respondent Spouse acknowledge  
9 that this Order To Cease and Desist, Order for Restitution, Order for Administrative Penalties, and  
10 Consent to Same (“Order”) constitutes a valid final order of the Commission.

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

14           3.     Respondent and Respondent Spouse acknowledge and agree that this Order is entered  
15 into freely and voluntarily and that no promise was made or coercion used to induce such entry.

16           4.     Respondent and Respondent Spouse have been represented by an attorney in this  
17 matter. Respondent and Respondent Spouse have reviewed this order with their attorney, Ashley  
18 Adams, Esq., and understand all terms it contains. Respondent and Respondent Spouse  
19 acknowledge that their attorney has apprised them of their rights regarding any conflicts of interest  
20 arising from dual representation. Respondent and Respondent Spouse acknowledge that they have  
21 each given their informed consent to such representation.

22           5.     Respondent and Respondent Spouse neither admit nor deny the Findings of Fact and  
23 Conclusions of Law contained in this Order. Respondent and Respondent Spouse agree that  
24 Respondent and Respondent Spouse shall not contest the validity of the Findings of Fact and  
25 Conclusions of Law contained in this Order in any present or future administrative proceeding  
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1 before the Commission or any other state agency concerning the denial or issuance of any license  
2 or registration required by the state to engage in the practice of any business or profession.

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

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

13 8. Respondent and Respondent Spouse understand that this Order does not preclude the  
14 Commission from referring this matter to any governmental agency for administrative, civil, or  
15 criminal proceedings that may be related to the matters addressed by this Order.

16 9. Respondent and Respondent Spouse understand that this Order does not preclude any  
17 other agency or officer of the state of Arizona or its subdivisions from instituting administrative,  
18 civil, or criminal proceedings that may be related to matters addressed by this Order.

19 10. Respondent agrees that Respondent will not apply to the state of Arizona for  
20 registration as a securities dealer or salesman or for licensure as an investment adviser or  
21 investment adviser representative until such time as all restitution and penalties under this Order  
22 are paid in full.

23 11. Respondent agrees that Respondent will not exercise any control over any entity that  
24 offers or sells securities or provides investment advisory services within or from Arizona until  
25 such time as all restitution and penalties under this Order are paid in full.

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

7           13. Respondent and Respondent Spouse agree that Respondent and Respondent Spouse  
8 will continue to cooperate with the Securities Division including, but not limited to, providing  
9 complete and accurate testimony at any hearing in this matter and cooperating with the state of  
10 Arizona in any related investigation or any other matters arising from the activities described in  
11 this Order.

12           14. Respondent and Respondent spouse acknowledge that any restitution or penalties  
13 imposed by this Order are obligations of the Respondent as well as the marital community of  
14 Respondent and Respondent Spouse.

15           15. Respondent and Respondent Spouse consent to the entry of this Order and agree to  
16 be fully bound by its terms and conditions.

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

20           17. Respondent and Respondent Spouse understand that default shall render Respondent  
21 and Respondent Spouse liable to the Commission for its costs of collection and interest at the  
22 maximum legal rate.

23           18. Respondent and Respondent Spouse agree and understand that if they fail to make  
24 any payment as required in the Order, any outstanding balance shall be in default and shall be  
25 immediately due and payable without notice or demand. Respondent and Respondent Spouse  
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1 agree and understand that acceptance of any partial or late payment by the Commission is not a  
2 waiver of default by Commission.

3  
4 Jeffrie Harper

5 Kathleen Janice Harper

6  
7 STATE OF ARIZONA )  
8 County of ) ss )

9 SUBSCRIBED AND SWORN TO BEFORE me by Jeffrie Harper

10 this 28 day of July, 2009.

11  
12 Linda Dekker  
13 NOTARY PUBLIC

14 My commission expires:



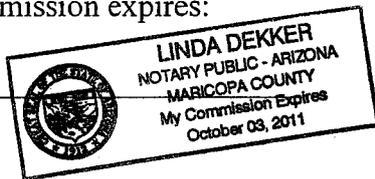
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16 STATE OF ARIZONA )  
17 County of ) ss )

18 SUBSCRIBED AND SWORN TO BEFORE me by Kathleen Janice Harper

19 this 28 day of July, 2009.

20  
21 Linda Dekker  
22 NOTARY PUBLIC

23 My commission expires:



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SERVICE LIST FOR:

ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY: JEFFRIE HARPER and KATHLEEN JANICE HARPER

DOCKET NO.:

S-20649A-09-0013

Ashley D. Adams, PLC  
8245 North 85<sup>th</sup> Way  
Scottsdale, AZ 85258

Robert D. Mitchell  
Julie M. Beauregard  
Mitchell & Associates  
1850 North Central Avenue, Suite 1715  
Phoenix, AZ 85004

Knuckleball Capital Management, LLC  
c/o Dwight Massey  
1045 E. Sorenson St.  
Mesa, AZ 85203