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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

NOV 13 2009

COMMISSIONERS

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

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<p>In the matter of:</p> <p>ROBERT FRANKLIN HOCKENSMITH JR., CRD# 1798614</p> <p style="text-align: center;">Respondent.</p>	<p>) DOCKET NO. S-20631A-08-0503</p> <p>) DECISION NO. <u>71334</u></p> <p>) ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, OF REVOCATION AND CONSENT TO SAME</p>
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Respondent ROBERT FRANKLIN HOCKENSMITH JR. ("Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Restitution, of Revocation, and Consent to Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation Commission ("Commission"). Respondent consents to entry of the Order without admitting or denying any of the Findings of Fact and Conclusions of Law contained in the Order, without trial of any issue of fact or law pertaining to this Order and provided that no Findings of Fact or Conclusions of Law contained in the Order shall be attributed to, effective against or binding upon Respondent for any purpose other than in this case or any other proceeding before the Commission involving Respondent. Nothing herein shall have any collateral estoppel or res judicata effect against the Respondent for any purpose except for any proceeding before the Commission involving Respondent. Respondent consents to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

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3 1. ROBERT FRANKLIN HOCKENSMITH JR. ("Respondent"), CRD# 1798614,
4 was at all pertinent times a resident of Glendale, Arizona, and a registered securities salesman
5 affiliated with H.D. Vest Investment Services, Inc. ("H.D. Vest"), an Arizona registered securities
6 dealer, from November 5, 1999, until he was discharged on or around April 17, 2008, for allegedly
7 engaging in selling away, sale of unregistered securities, and accepting personal loans from
8 customers, relating to the transactions that are the subject of this action.

9 2. At all pertinent times, Respondent provided investment advice to H.D. Vest
10 customers through H.D. Vest Advisory Services, a non-bank subsidiary of Wells Fargo and
11 Company.

12 3. Respondent is and was at all pertinent times licensed by the Arizona Board of
13 Accountancy as a certified public accountant ("CPA"). Respondent owns a CPA firm, Robert F.
14 Hockensmith, P.C. ("RFH"), an Arizona professional corporation through which, at all pertinent
15 times, Respondent provided tax planning and preparation, accounting, and consulting services to
16 around 350 customers. Respondent was licensed by the Arizona Department of Insurance through
17 February 2009 as a producer, authorized to sell variable life and annuity products and life and
18 health policies.

19 4. At all pertinent times, Respondent held himself out to his customers as having
20 expertise in providing tax, financial planning and investment advisory services. Respondent's
21 letterhead, e-mails, and fax cover sheets listed Respondent's credentials and affiliations as follows:
22 Certified Public Accountant, Certified Financial Planner, Certified Senior Advisor, and Certified
23 Legal Document Preparer, offering securities through H.D. Vest and advisory services through
24 H.D. Vest Advisory Services.

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1 **A. Respondent Offered and Sold Unregistered Securities.**

2 5. Beginning around August 2006, Respondent offered and sold unregistered securities
3 in the form of investment contracts and/or commodity investment contracts to customers of his
4 CPA firm, including several H.D. Vest customers. These securities involved a pooling of
5 investors' money in a foreign bank account under the name of a foreign entity controlled by a
6 trader, who was to use the funds to purchase and sell foreign currencies on a foreign currency
7 exchange ("forex").

8 6. Beginning sometime in 2006, during tax preparation and financial planning
9 discussions with customers, Respondent mentioned that he could introduce his customers to an
10 investment opportunity that would increase customers' monthly income and also had some tax
11 advantages.

12 7. Respondent told his customers that Respondent and his family had invested large
13 amounts of their own money in these investments, and were receiving large profits. Respondent
14 showed his customers on his computer screen purported earnings from daily trades. Respondent
15 told customers that they could watch their profits grow daily on their own computer screens.

16 8. Respondent told his customers that they could withdraw their profits each month, or
17 leave them in the investment to earn more profits.

18 9. Respondent told customers that they needed cash in the amount of \$100,000.00 for
19 an initial investment, which would provide profits averaging \$4,000.00 per month.

20 10. Respondent told his customers that a highly skilled trader named James Roberts
21 ("Roberts"), through a company called FOMAC International, Inc. ("FOMAC"), had developed a
22 trading strategy that Roberts had used successfully for several years to make large profits for
23 individual investors.

24 11. Respondent told his customers that their investment funds would be pooled with
25 other investors' funds and that Roberts would have complete discretion over how to use their funds
26 to generate profits through trading foreign currencies daily.

1 12. Respondent told his customers that he had observed Roberts' trading in the FOMAC
2 program, and that the FOMAC program produced monthly profits varying between 3.25% and
3 20.46%.

4 13. Most of Respondent's customers had no knowledge concerning foreign currency
5 trading, and invested in these securities based solely upon the information that Respondent
6 provided to them and the confidence they had in Respondent's expertise in financial matters.

7 14. Respondent did not tell his customers that the FOMAC investments were securities,
8 or that these securities were not registered with any state or federal regulatory authority.

9 15. Respondent gave his customers FOMAC's wiring instructions, telling them how to
10 wire their funds directly from their own bank accounts to an account in Costa Rica, for the benefit
11 of a foreign entity called Consultores Las Tres Americas S.A.

12 16. Respondent distributed FOMAC's application forms to customers in Respondent's
13 own office in Glendale, Arizona. The FOMAC documents described the investment as "deposits"
14 in a "managed account program."

15 17. The FOMAC application forms included: (a) a "Client Registration and Deposit
16 Form and Application for Membership;" (b) a "Letter of Intent & Non-Circumvention and Non-
17 Disclosure Agreement;" (c) "International Bank Wiring instructions for Your Bank and Your Bank
18 Account;" (d) "FOMAC Last Will and Testament;" and (e) Rules and Regulations.

19 18. The FOMAC Rules and Regulations contained the following introductory
20 statement:

21 FOMAC MANAGED ACCOUNTS has been created with a view to
22 the needs of depositors who wish to take advantage of the lucrative
23 international Foreign Currency Exchange (FOREX), heretofore
24 available only to large banks and business corporations. It will give
25 the small working class depositor the opportunity to take advantage of
26 the attractive high yields possible through FOREX trading and realize
a steady monthly income to supplement his or her regular income or
retirement income.

1 This introduction was followed by 15 statements explaining how the program worked, including
2 (1) that there would be no membership fee; (2) that the minimum initial deposit would be
3 US\$25,000.00; (3) that "Funds deposited will be utilized in the FOREX international trading
4 market and the proceeds realized will be divided 50%-50% between the Client and FOMAC
5 INTERNATIONAL;" and (4) that "Each depositor will be expected to maintain a quiet and low
6 profile regarding registration with FOMAC."

7 19. Respondent, or his office assistants, filled out most of the information on the
8 application forms for his customers' investments in the FOMAC program, so that Respondent's
9 customers only needed to sign the forms. Respondent's customers signed their application forms
10 in Respondent's office. Respondent and his office assistants even witnessed the investors'
11 signatures on the Last Will and Testament forms.

12 20. Respondent created a form letter to "Jim Roberts" for his customers to sign, which
13 instructed Roberts as follows: "One percent of the assets of this account are to be deposited into
14 Robert Hockensmith's account each month." After having his customers sign the letters,
15 Respondent sent the letters to Roberts with the FOMAC application forms, in most cases without
16 even giving his customers a copy of the "fee" instructions.

17 21. Respondent told some of his customers that he was so confident in the success of
18 the program that he was mortgaging everything he owned, including his rental properties and his
19 own home, and was borrowing money to invest as much money as he could get hold of in the
20 FOMAC program. Respondent and his accounting firm and his sister invested approximately
21 \$1,770,000.00 in FOMAC, and lost approximately \$1,220,000 when the scheme collapsed in July
22 2007.

23 22. From August 2006 through July 2007, Respondent sold FOMAC securities to
24 around 37 customers of his CPA firm. Seventeen of these customers were also customers of H.D.
25 Vest. Respondent's customers invested approximately \$8,000,000.00 in these FOMAC securities,
26 through Respondent's efforts and lost approximately \$6,000,000.00.

1 23. Some of Respondent's customers invested their life's savings in FOMAC. Some of
2 Respondent's customers cashed out other safer investments, such as annuities, IRAs, or life
3 insurance policies, incurring withdrawal penalties or tax liabilities. Other customers borrowed
4 funds to invest, incurring monthly interest payment obligations on the loans, in order to receive the
5 monthly income expected from these securities investments.

6 24. In or around August 2007, FOMAC failed to pay Respondent monthly profits
7 reflected on Respondent's FOMAC computer print-outs. Roberts failed to respond to several of
8 Respondent's telephone calls and emails, except to tell Respondent that he had retained an attorney
9 who had instructed him not to speak to anyone about FOMAC.

10 25. In or around August 2007, Respondent telephoned and emailed his FOMAC
11 customers and scheduled meetings with many of them in his office. Respondent told his customers
12 that FOMAC was a fraud, and that they had all lost their money. Respondent told his customers
13 that Respondent had reported the fraud to the FBI, and that they could contact the FBI to report
14 their losses.

15 26. In or around late August and September 2007, the US Department of Justice Victim
16 Notification System sent FOMAC investors emails, alerting them that on August 31, 2007, the
17 Securities and Exchange Commission ("SEC") had filed a Temporary Restraining Order ("TRO")
18 against Roberts, d/b/a FOMAC and Consultores Las Tres Americas, in the U.S. District Court in
19 Little Rock, Arkansas, to halt the alleged ongoing Ponzi scheme and freeze assets for the benefit of
20 defrauded investors. The SEC's complaint in *SEC v. James B. Roberts, FOMAC International,*
21 *Inc., and Consultores Las Tres Americas S.A.*, Civil Action No. 4.07.CV.786 (JLH)(U.S.D.C./E.D.
22 Ark. August 31, 2007), alleged that the defendants raised at least \$50 million since 2002 from
23 approximately 450 investors located primarily in the U.S. and Costa Rica; and that as early as
24 2005, the defendants experienced significant losses while trading investor funds in the Forex
25 markets, misappropriated at least \$3 million, and then used new investor money to pay returns and
26 principal to existing investors.

1 by engaging in conduct pursuant A.A.C. Rule R14-4-130(A)(15), by borrowing money from a
2 customer that was not a relative of the salesman or a person in the business of lending funds and
3 A.A.C. R14-4-130(A)(17), by effecting securities transactions that were not recorded on the
4 records of the dealer with whom he was registered at the time of the transactions.

5 5. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S.
6 § 44-2032 and A.R.S. § 44-1962.

7 6. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
8 2032 and A.R.S. § 44-1962.

9 III.

10 ORDER

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

15 IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962, that Respondent,
16 and any of Respondent's agents, employees, successors and assigns, permanently cease and desist
17 from violating the Securities Act.

18 IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry
19 of Order.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962, that
21 Respondent shall pay restitution to the Commission in the amount of \$200,000.00. Payment shall
22 be made in installments as follows: \$100,000.00 on the date of this Order and the remaining
23 balance to be paid in semi-annual installments of \$12,500.00 to be made on or before the 1st day of
24 May and on or before the 1st day of November of each year beginning May 1, 2010 until paid in
25 full. Respondent shall turn over all payments received from the FOMAC Receiver to be applied to
26 the outstanding balance due under this paragraph until paid in full. Payment shall be made to the

1 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. If
2 Respondent does not make any payment when due under the terms of this paragraph any
3 outstanding balance shall be deemed in default, be immediately due and payable, and shall accrue
4 interest at the rate of 10% per annum until paid in full.

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

13 IT IS FURTHER ORDERED that Respondent cooperate with the Division in providing a
14 complete accounting of all distributions paid to FOMAC investors who were his clients at the time
15 that they invested in FOMAC.

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent's securities
17 salesman registration is revoked.

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

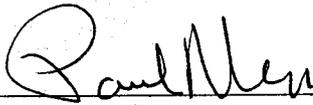
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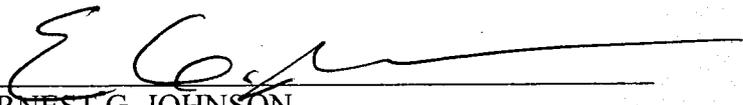
IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the Commission may bring further legal proceedings against Respondent including application to the superior court for an order of contempt.

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

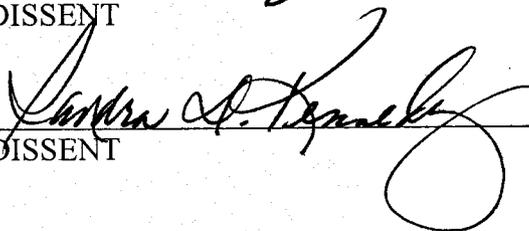
BY ORDER OF THE ARIZONA CORPORATION COMMISSION

		
CHAIRMAN		COMMISSIONER
		
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, 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 13th day of November, 2009.


ERNEST G. JOHNSON
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.

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CONSENT TO ENTRY OF ORDER

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1. Respondent Robert Franklin Hockensmith Jr. ("Respondent"), an individual, admits the jurisdiction of the Commission over the subject matter of this proceeding. Respondent acknowledges that Respondent has been fully advised of Respondent's right to a hearing to present evidence and call witnesses and Respondent knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order To Cease And Desist, Order for Restitution, of Revocation, and Consent to Same ("Order") constitutes a valid final order of the Commission.

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

3. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent acknowledges that Respondent has been represented by an attorney in this matter, Respondent has reviewed this Order with Respondent's attorney, Paul J. Roshka, and understands all terms it contains.

5. Respondent consents to entry of the Order without admitting or denying any of the Findings of Fact and Conclusions of Law contained in the Order, without trial of any issue of fact or law pertaining to this Order and provided that no Findings of Fact or Conclusions of Law contained in the Order shall be attributed to, effective against or binding upon Respondent for any purpose other than in this case or any other proceeding before the Commission involving Respondent. Nothing herein shall have any collateral estoppel or res judicata effect against the Respondent for any purpose except for any proceeding before the Commission involving Respondent.

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

6 7. While this Order settles this administrative matter between Respondent and the
7 Commission, Respondent understands that this Order does not preclude the Commission from
8 instituting other administrative or civil proceedings based on violations that are not addressed by
9 this Order.

10 8. Respondent understands that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. Respondent understands that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. Respondent agrees that Respondent will not apply to the state of Arizona for
17 registration as a securities dealer or salesman or for licensure as an investment adviser or
18 investment adviser representative at any time in the future.

19 11. Respondent agrees that Respondent will not sell any securities in or from Arizona
20 without being properly registered in Arizona as a dealer or salesman, or exempt from such
21 registration; Respondent will not sell any securities in or from Arizona unless the securities are
22 registered in Arizona or exempt from registration; and Respondent will not transact business in
23 Arizona as an investment adviser or an investment adviser representative unless properly licensed
24 in Arizona or exempt from licensure.

25 12. Respondent consents to the entry of this Order and agrees to be fully bound by its
26 terms and conditions.

1 SERVICE LIST FOR:

ROBERT F. HOCKENSMITH, JR.
CRD #1798614

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ORDER TO CEASE AND DESIST, ORDER
FORRESTITUTION, ORDER OF
3 REVOCATION AND CONSENT TO SAME

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DOCKET NO.:

S-20631A-08-503

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