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JUN 06 2001

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED BY	<i>sd</i>
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1
2 WILLIAM A. MUNDELL
Chairman
3 JIM IRVIN
Commissioner
4 MARC SPITZER
Commissioner
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6 In the matter of :

7 UNITED PLANNERS' FINANCIAL SERVICES)
OF AMERICA, A LIMITED PARTNERSHIP,)
8 7333 East Doubletree Ranch Road, Suite 120)
Scottsdale, Arizona 85258)
9 CRD# 20804)

DOCKET NO. S-03367-A-01-0000

DECISION NO. 63730

) ORDER TO CEASE AND DESIST,
) ORDER FOR RESTITUTION, ORDER
) FOR ADMINISTRATIVE PENALTIES
) AND CONSENT TO SAME

11 Respondent.

12 I.

13 INTRODUCTION

14 UNITED PLANNERS' FINANCIAL SERVICES OF AMERICA, A LIMITED
15 PARTNERSHIP ("UPFS"), elects to permanently waive its right to a hearing and appeal under
16 Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* (the "Securities
17 Act") with respect to this Order ("Order"); admits the jurisdiction of the Arizona Corporation
18 Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of
19 Law contained in this Order; and consents to the entry of this Order by the Commission.

20 II.

21 FINDINGS OF FACT

22 1. At all relevant times UPFS conducted business within or from the state of Arizona.
23 UPFS has been a registered securities dealer with the state of Arizona since January 1988.

24 2. UPFS markets primarily mutual funds, variable products, general, municipal and
25 government securities.

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1 3. UPFS failed to examine on an annual basis from the beginning of 1997 to the end of
2 1999, one of its two Arizona Offices of Supervisory Jurisdiction. This violated the supervisory
3 requirements contained in UPFS' written Compliance Manual.

4 4. In January of this year, UPFS entered into a letter of acceptance, waiver and
5 consent with the National Association of Securities Dealers Regulation, Inc. ("NASDR"). UPFS
6 was censured and fined \$50,000 for, during the period of 1997-1999, failing to: inspect each Office
7 of Supervisory Jurisdiction annually, establish a schedule for the periodic inspection of branch
8 offices, conduct annual compliance interviews with each registered representative, prepare a
9 written training plan annually, and implement a continuing education program, all of which were
10 required by NASD rules.

11 **JAMES W. SHAW / JAMES W. SHAW & ASSOCIATES / RICHARD MINEWEASER**

12 5. From February 6, 1991 until December 17, 1998, James W. Shaw ("Shaw") was
13 registered through UPFS as a securities salesman in Arizona.

14 6. In 1991, Shaw operated UPFS' offices in San Diego, California and in Scottsdale,
15 Arizona. Both offices operated under the name of James W. Shaw & Associates, Inc. The
16 Scottsdale office reported to the San Diego office for supervisory purposes.

17 7. In February 1991 Shaw became a partner of UPFS. Shaw signed a UPFS
18 partnership agreement. The partnership agreement and provisions in the UPFS Compliance
19 Manual required Shaw to become a registered principal within a reasonable period of time. In
20 1993, UPFS' Compliance Department instructed Shaw that he had to become a registered principal
21 by passing the series 24 exam. Shaw never took the series 24 exam and was allowed to hire in
22 September 1994 a principal for his Scottsdale office. The principal hired was Richard L.
23 Mineweaser, Jr. ("Mineweaser") who held a series 24 license. Mineweaser was not assigned as
24 principal over Shaw's San Diego office because that office was closed prior to September 1994.

25 8. In June 1991, UPFS audited Shaw's San Diego office. No evidence was found of
26 any correspondence file, complaint file, advertising file, broker's book or cross-posting pages.

1 These files were required to be maintained by procedures listed in UPFS' written Compliance
2 Manual. Shaw's business cards and letterhead stationery did not contain the mandatory disclosure
3 of UPFS as the securities dealer in conformity with requirements in UPFS' written Compliance
4 Manual. A securities salesperson in the office signed the last page of the Compliance Examination
5 Review as principal of Shaw's office. This salesperson was registered with another securities
6 dealer and has never been registered with UPFS.

7 9. In October 1993, Shaw mailed a newsletter to his clients that had not been approved
8 by UPFS. The newsletter advised Shaw's clients to transfer their investments from fixed income
9 funds into utility funds. The distribution by Shaw of a non-approved newsletter was in violation of
10 supervisory requirements contained in UPFS' written Compliance Manual.

11 10. From April 5, 1994 until December 31, 1998, Mineweaser was registered through
12 UPFS as a securities salesman in Arizona. UPFS assigned Mineweaser as principal for Shaw's
13 Scottsdale office on September 13, 1994. On that same date, Shaw executed a registered
14 representative's agreement with UPFS and Mineweaser signed the agreement as the registered
15 principal. Mineweaser states that he never consented to become principal for Shaw's Scottsdale
16 office. Mineweaser was a full-time commercial real estate broker with his real estate office in the
17 same building as Shaw's office. Mineweaser states that he never exercised supervisory
18 responsibilities over any UPFS registered representative. Mineweaser states that he never
19 discussed any securities business with Shaw or any employee in Shaw's office. Mineweaser did
20 not conduct any securities business while registered through UPFS. Mineweaser further states that
21 he never received any compensation for his assignment by UPFS as the principal of Shaw's office.

22 11. During the more than four years Mineweaser was registered through UPFS, he
23 failed to participate in any annual compliance related interview or meeting. This was in violation
24 of supervisory requirements contained in UPFS' written Compliance Manual.

25 12. On March 15, 1995, UPFS conducted its only audit of Shaw's office in Scottsdale,
26 Arizona. Only four out of nine customer files reviewed had a copy of a new account form. None

1 of the files reviewed contained a copy of any ancillary documents such as trust documents.
2 Letterhead and business cards failed to conform to requirements set forth in the UPFS Compliance
3 Manual. These were violations of the supervisory requirements contained in UPFS' written
4 Compliance Manual. On this same date, Shaw completed and signed a Compliance Questionnaire.
5 Mineweaser states that he was not aware of the examination of Shaw's office at the time it was
6 done nor was he ever notified by UPFS that Shaw's office had been examined.

7 13. UPFS failed to examine Shaw's office after March 1995 and before December 1998
8 when Shaw resigned from UPFS. This was in violation of supervisory requirements contained in
9 UPFS' written Compliance Manual.

10 14. On April 3, 1996, James W. Shaw & Associates filed a voluntary petition for
11 Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Arizona. On July 16, 1996,
12 the bankruptcy petition was dismissed. UPFS learned of the bankruptcy filing when someone at
13 the firm saw the bankruptcy notice listed in a local business newspaper. By a letter dated March
14 11, 1997, UPFS acknowledged that the firm had known for some time about James W. Shaw &
15 Associates petition for bankruptcy. UPFS requested that Shaw update a form U-4 to disclose the
16 bankruptcy and return it to UPFS no later than March 22, 1997. Shaw responded verbally to UPFS
17 on April 24, 1997. On April 30, 1997, UPFS filed an updated form U-4 for Shaw. Shaw's failure
18 to promptly file an amended form U-4 after filing for bankruptcy and UPFS' knowledge that Shaw
19 had not updated his form U-4, violated requirements in the UPFS written Compliance Manual.

20 15. Shaw failed to participate in any compliance-related interview or meeting in 1993,
21 1994, 1997 and 1998. This was in violation of supervisory requirements contained in UPFS'
22 written Compliance Manual.

23 16. An organizational chart of UPFS as of July 1996 showed Mineweaser as principal
24 over four registered representatives. Three of these representatives were in Shaw's office,
25 including James Shaw, and Robert Scalzi. Mineweaser did not know the third representative in
26 ...

1 Shaw's office. The fourth representative on the chart had her office in Minnesota and Mineweaser
2 states that he did not know her nor had he ever visited her office.

3 17. During all relevant time periods, UPFS had written supervisory procedures but the
4 procedures and the system for employing those procedures were not reasonably designed to
5 prevent and detect violations by its salespersons in Shaw's offices of the Securities Act, or of the
6 rules or regulations adopted thereunder.

7 **ROBERT SCALZI**

8 18. From June 9, 1993, until July 29, 1997, Robert Scalzi ("Scalzi") was registered
9 through UPFS as a securities salesman in Arizona. Scalzi worked in Shaw's Scottsdale office.
10 Scalzi worked for Shaw and only had one client account.

11 19. On March 20, 1995, Scalzi filled out a written compliance interview questionnaire.
12 He acknowledged mailing to his clients an Estate Planning newsletter in 1994 without first having
13 it approved by a UPFS principal. This was in violation of supervisory requirements contained in
14 UPFS' written Compliance Manual.

15 20. On April 27, 1997, Scalzi allowed Medco, Inc. ("Medco") to place the following
16 solicitation in the Arizona Republic newspaper: "12%+ Per Annum, Fixed Income, 12-36 Months,
17 DOUBLY Collateralized, Paid Monthly, IRA Qualified, Insured; R. Scalzi & Assoc., Inc., Robert
18 Scalzi, PhD, MBA, RFC; 677-1142, 998-3200; We pay penalties and surrender charges." This
19 was a solicitation for purchase of promissory notes collateralized by chattel mortgages from
20 Medco. Medco was a Ft. Lauderdale, Florida corporation that purchased medical equipment and
21 then sold or leased the equipment. In 1997, a receiver was appointed to control Medco's assets
22 after a temporary restraining order was entered at the request of the SEC.

23 21. In or about April through July 1997, Scalzi offered for sale and sold Medco
24 securities totaling approximately \$524,580.36 to five or more investors. These securities were
25 offered for sale and sold within or from Arizona. The Medco securities sold were not registered,
26 not the subject of a notice filing and not exempt from registration.

1 22. The five investors in Medco consisted of two married couples and an individual
2 investor. The first couple invested a total of approximately \$270,354.82 in Medco through Scalzi
3 in three separate transactions. They were former clients of Shaw. The second couple invested a
4 total of approximately \$250,000 in Medco through Scalzi. Their funds were liquidation proceeds
5 of a variable annuity they had purchased through Shaw. Their file in Shaw's office contained a
6 copy of the confirmation document for withdrawal of \$250,000 from the annuity to be paid to the
7 Medco trust account. The individual investor invested a total of approximately \$4,000 in Medco
8 through Scalzi.

9 23. UPFS did not authorize Scalzi to conduct any private securities transactions. The
10 sales of securities in Medco were not recorded on the books of UPFS.

11 24. On April 29, 1997, a friend of the UPFS Compliance Officer notified him of
12 Scalzi's solicitation in the Arizona Republic newspaper two days earlier. That same day, someone
13 from Shaw's office faxed the solicitation to the Compliance Officer.

14 25. On May 5, 1997, Scalzi met the UPFS Compliance Officer at the home office.
15 Scalzi delivered a letter dated that same day to the Compliance Officer asking permission to sell
16 investments in Medco to accredited investors who were not UPFS' clients as long as it was
17 determined that Medco investments were not securities. Scalzi avowed in the letter that no public
18 advertising or solicitation would take place. The Compliance Officer questioned Scalzi about the
19 solicitation in the Arizona Republic newspaper. Scalzi denied that he had sold any investments in
20 Medco. Scalzi informed the Compliance Officer that his niece's husband was an officer with
21 Medco. The Compliance Officer told Scalzi not to sell any investments in Medco.

22 26. By letter dated May 21, 1997, the UPFS Compliance Officer notified Scalzi that
23 UPFS at that time had elected not to take any action against him concerning his involvement with
24 Medco. Scalzi was enjoined from offering to sell or having anything else to do with Medco
25 securities or its personnel and he was ordered to follow NASD Conduct Rule 3040 that prohibits
26 selling away.

1 27. UPFS failed to discover through its own supervisory procedures Scalzi's private
2 securities transactions in Medco. It was not until August 1, 1997, during a meeting between the
3 second couple and UPFS' newly appointed principal in Shaw's office, that the couple mentioned
4 their purchase of Medco securities from Scalzi. The newly appointed principal acknowledged that
5 in the couple's file he saw a confirmation for a \$250,000 withdrawal from their variable annuity
6 account to be paid to the Medco trust account.

7 28. At a meeting held August 5, 1997, between Scalzi and UPFS' personnel, Scalzi
8 notified UPFS of his Medco transactions in April and May 1997 with the first couple. Scalzi failed
9 to notify UPFS of his Medco transaction in July 1997 with the individual investor.

10 29. Both couples subsequently sought arbitration with the NASD and settled their
11 claims against UPFS. All five investors received interest payments from Medco before the
12 company went into receivership. They all received disbursements from the Medco Receiver.

13 30. UPFS failed to conduct an investigation, other than questioning Scalzi, into whether
14 or not he had sold securities in Medco. At no time did a UPFS principal conduct a surprise audit
15 of Shaw's client files to verify Scalzi's claim to the UPFS Compliance Officer that he had not sold
16 investments in Medco. UPFS never directed anyone to conduct an examination of Shaw's client
17 files before or after UPFS found out that Scalzi had in fact sold securities in Medco to the second
18 couple.

19 31. Scalzi failed to participate in any compliance related interview or meeting in 1993,
20 1994, 1996 and 1997. This was in violation of supervisory requirements contained in UPFS'
21 written Compliance Manual.

22 32. During all relevant time periods, UPFS had written supervisory procedures but the
23 procedures and the system for employing those procedures were not reasonably designed to
24 prevent and detect violations by its salespersons in Shaw's offices of the Securities Act, or of the
25 rules or regulations adopted thereunder.

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1 action such as conducting thorough investigations into known violations of the Securities Act and
2 conducting unannounced audits of Shaw's offices. By not taking such affirmative action, UPFS
3 did not discover in a timely manner Scalzi's dishonest or unethical conduct and thereby failed to
4 supervise its salesperson in Shaw's office, pursuant to A.A.C. R14-4-131.

5 5. UPFS' conduct is grounds for a cease and desist order to be issued pursuant to
6 A.R.S. § 44-2032.

7 6. UPFS' conduct is grounds for an order of restitution to be issued pursuant to A.R.S.
8 § 44-2032.

9 7. UPFS' conduct is grounds for penalties to be assessed pursuant to A.R.S. § 44-
10 2036.

11 **V.**

12 **ORDER**

13 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and UPFS'
14 consent to entry of this Order, the Commission finds that the following relief is appropriate, in the
15 public interest, and necessary for the protection of investors:

16 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that UPFS cease and desist from violating
17 the Securities Act.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that UPFS shall pay an
19 administrative penalty in the amount of \$75,000 to the state of Arizona upon entry of this Order for
20 deposit into the state general fund. Any amount outstanding shall accrue interest at the rate of 10%
21 per annum from the date of this Order until paid in full.

22 IT IS FURTHER ORDERED, that UPFS will within two months from the date of this
23 Order, submit a plan to the Securities Division for approval that incorporates all of the measures
24 set forth in the "Remedial Measures" section above.

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1 IT IS FURTHER ORDERED, that UPFS will adopt, implement and maintain all remedial
2 measures and new supervisory and compliance procedures as set forth in the plan referred to
3 above, as approved by the Securities Division.

4 IT IS FURTHER ORDERED, that UPFS shall pay restitution in the principal amount of
5 \$4,000, plus interest at the rate of 10% per annum from the date of the investment until paid in full,
6 to Scalzi's individual investor pursuant to A.R.S. § 44-2032. Said amount is due and payable upon
7 entry of this Order and shall be deposited into an interest bearing account maintained and
8 controlled by the Arizona Attorney General. The amount payable to this investor shall be offset by
9 payments to this investor from any other source made prior to the entry of this Order. Any funds
10 that the Attorney General is unable to disburse shall revert to the state of Arizona.

11 IT IS FURTHER ORDERED, that within 90 days of the date of this Order, UPFS will
12 conduct or complete an on-site examination and audit of each OSJ in Arizona to the extent such
13 examination and audit have not already been completed during 2001. These examinations will be
14 documented and a copy thereof provided to the Division within 30 days of the completion of each
15 examination. If the examination was completed during 2001 prior to the entry of this Order, the
16 documentation will be provided within 30 days of the entry of this Order. Thereafter, an
17 examination will be performed at each OSJ in Arizona at least semi-annually for a period of three
18 years from the date of this Order. Each examination performed at least semi-annually will be
19 documented and a copy thereof provided to the Division within 30 days of the completion of the
20 examination.

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1 IT IS FURTHER ORDERED, that within 180 days after the date of this Order, UPFS will
2 conduct or complete an on site examination and audit of each non-OSJ office in Arizona to the
3 extent such examination and audit have not already been completed during 2001. These
4 examinations will be documented and a copy thereof provided to the Division within 30 days of
5 the completion of each examination. If the examination was completed during 2001 prior to the
6 entry of this Order, the documentation will be provided within 30 days of the entry of this Order.
7 Thereafter, an examination will be performed at each non-OSJ office in Arizona at least annually
8 for a period of three years from the date of this Order. Each examination performed at least
9 annually will be documented and a copy thereof provided to the Division within 30 days of the
10 completion of the examination.

11 IT IS FURTHER ORDERED, that the Commission shall retain jurisdiction in this matter to
12 investigate the activities of UPFS and its salespersons pursuant to A.R.S. § 44-1822 and to
13 otherwise insure compliance with this Order.

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1 IT IS FURTHER ORDERED, that a violation of any term of this Order shall constitute
2 grounds for revocation of the registration of UPFS after notice and an opportunity for a hearing as
3 provided by the Securities Act and applicable rules.

4 IT IS FURTHER ORDERED, that this Order shall become effective immediately upon the
5 date set forth below.

6
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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9  
10 CHAIRMAN COMMISSIONER COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. MCNEIL,
12 Executive Secretary of the Arizona Corporation
13 Commission, have hereunto set my hand and caused the
14 official seal of the Commission to be affixed at the
15 Capitol, in the City of Phoenix, this 6th day of
16 June, 2001.

17 
18 BRIAN C. MCNEIL
19 EXECUTIVE SECRETARY

20 _____
21 DISSENT
22 (ABB)

23 This document is available in alternative formats by contacting Shelly Hood, ADA Coordinator,
24 voice phone number: 602/542-3931, email: shood@cc.state.az.us.

1 CONSENT BY UNITED PLANNERS' FINANCIAL SERVICES OF AMERICA, A LIMITED
2 PARTNERSHIP, TO ENTRY OF AN ORDER BY THE COMMISSION
3 AND WAIVER OF HEARING

4 1. UNITED PLANNERS' FINANCIAL SERVICES OF AMERICA, A LIMITED
5 PARTNERSHIP ("UPFS"), admits the jurisdiction of the Arizona Corporation Commission
6 ("Commission") over the subject matter of this proceeding. UPFS acknowledges that it has been fully
7 advised of its right to a hearing to present evidence and call witnesses and UPFS knowingly and
8 voluntarily waives any and all rights to a hearing before the Commission and all other rights
9 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative
10 Code. UPFS acknowledges that this Order To Cease And Desist, Order For Restitution, Order For
11 Administrative Penalties And Consent To Same ("Order") constitutes a valid final order of the
12 Commission.

13 2. UPFS knowingly and voluntarily waives any right it may have under Article 12 of the
14 Securities Act to judicial review by any court by way of legal action, appeal, or extraordinary relief
15 resulting from the entry of this Order.

16 3. UPFS agrees that this Order is entered into knowingly and voluntarily and that no
17 promise was made or coercion used to induce it to enter into this Order.

18 4. UPFS acknowledges that it has been represented by counsel in this matter, it has
19 reviewed this Order and Consent with its legal counsel and understands all terms it contains.

20 5. UPFS neither admits nor denies the Findings of Fact and Conclusions of Law
21 contained in this Order.

22 6. UPFS consents to entry of this Order and agrees to be fully bound by its terms and
23 conditions.

24 7. Nothing in this Order shall be construed to restrict or preclude any other agency or
25 officer of the State or its subdivisions from initiating other administrative, civil or criminal
26 proceedings against UPFS, now or in the future, that may be related to the matters addressed by

1 this Order. Nothing in this Order shall be construed to restrict the State's right in a future
2 proceeding to bring an action against UPFS from or related to facts not set forth in this Order.

3 8. UPFS acknowledges that it has been informed and understands that the
4 Commission or its designee, at the Commission's sole and exclusive discretion, may refer this
5 matter, or any information or evidence gathered in connection therewith or derived therefrom, to
6 any person or entity having appropriate administrative, civil or criminal jurisdiction. In connection
7 therewith, UPFS acknowledges that no representations regarding the above have been made so as
8 to induce it to enter into this Order, and no promise or representation has been made by the
9 Commission or its designee or staff with regard to any potential criminal liability or immunity
10 from any potential criminal liability.

11 9. UPFS acknowledges that interest will continue to accrue on the unpaid balance of
12 the funds ordered to be paid, at the legal rate of 10% per annum pursuant to A.R.S. § 44-1201(A)
13 until the amount is paid in full.

14 10. UPFS further acknowledges that should it fail to comply with the provisions of this
15 Order, the Commission may enforce this Order in Superior Court, pursuant to A.R.S. § 44-
16 2036(C). In addition, the Commission may impose additional sanctions and costs and seek other
17 appropriate relief subject to UPFS' right to a hearing pursuant to the Securities Act.

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11. Thomas H Oliver represents that he is President CEO of United Planners' Financial Services Of America, a Limited Partnership, and has been authorized by United Planners' Financial Services Of America, a Limited Partnership, to enter into this Consent To Entry Of an Order By The Commission And Waiver Of Hearing for and on behalf of United Planners' Financial Services Of America, a Limited Partnership.

UNITED PLANNERS' FINANCIAL SERVICES OF AMERICA, A LIMITED PARTNERSHIP

BY: Thomas H. Oliver

TITLE: President CEO

SUBSCRIBED AND SWORN TO BEFORE me this 15th day of May, 2001.

Rosemary Lipton
NOTARY PUBLIC

My Commission Expires:

