

CARL J. KUNASEK  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

WILLIAM A. MUNDELL  
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
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Arizona Corporation Commission

MEMORANDUM

NOV 15 2000

**TO:** Chairman Carl J. Kunasek  
 Commissioner Jim Irvin  
 Commissioner William A. Mundell

**FROM:** Mark Sendrow *MS*  
 Director of Securities

**DATE:** November 13, 2000

**RE:** Docket No. S-03275A-00-0000 / Scott A. Gould

**CC:** Brian C. McNeil, Executive Secretary

DOCKETED BY	<i>MS</i>
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An Order to Cease and Desist, Order of Rescission, Order for Administrative Penalties and Consent to Same against Scott A. Gould ("Gould") is attached. In February 1998, the Securities Division ("Division") received information from the State Banking Department. An ex-employee reported that Gould was accepting money from investors and depositing the money into his personal account at Bank of America. Gould allegedly used the money to make high interest auto and new construction loans. The complaint alleged that Gould conducted more than five transactions per year without being licensed.

An investigation revealed that the Division previously investigated the activities of Gould and a company he was affiliated with, MGF Funding, Inc. ("MGF") in 1995. The 1995 investigation resulted in a Cease and Desist Order and Consent to Same on April 5, 1995, Decision Number 59055. At that time, Gould was involved in selling promissory notes ("Notes") in return for money, which Gould used to fund high interest construction loans. Gould was not a registered securities salesman. The Commission ordered Gould to make rescission offers to all 33 investors. He paid a total rescission amount of \$145,000 on June 14, 1995. Gould was ordered to pay an administrative penalty of \$5,000, which was reduced to \$1,000 after the rescission terms were met.

The investigation initiated in 1998 disclosed that Gould failed to disclose to the Division the names of some investors during the 1995 investigation. At least two of these individuals have subsequently been identified. After the Commission issued the Cease and Desist Order in 1995, Gould continued to borrow money from individuals to finance construction loans and signed Notes that were not registered as securities in the state of Arizona nor offered in reliance upon an available exemption from registration and not subject to a notice filing, thereby violating

the securities statutes and the prior Order. The money received from lenders was pooled with other investor funds and used to make loans to commercial builders of single-family residences. Gould provided investors with unregistered promissory notes ("Post Hearing Notes") paying between 10% – 16% for use of their money. Gould charged the commercial builders interest rates ranging between 18% – 21%. The funds received from investors for the Post Hearing Notes were placed into a bank account in the name of Scott A. Gould and under the signatory power of Gould.

Gould was not a registered securities dealer in the state of Arizona during the time the above described offers and sales took place. In fact, in 1995 the Commission ordered that he could not apply for registration as a securities dealer, securities salesman, investment adviser or investment adviser representative under the Securities Act or Investment Management Act of Arizona for a period of ten years from the date of entry of the Order.

The attached consent Order would subject Gould to an administrative penalty of \$30,000.00. Gould delivered a cashier's check payable to the state of Arizona in full payment of the penalty. Additionally, the consent requires Gould to make an offer of rescission, with 10% interest since the date of the purchase, to all investors who purchased unregistered securities. The Order specifies that Gould is not to apply for registration as a securities dealer or salesman, or for licensure as an investment adviser or investment adviser representative, under the Securities Act of Arizona or the Investment Management Act of Arizona, at any time in the future. The Division recommends approval of the Order.

Originator: Kathryn McCormick

AG Assigned: Robert Zumoff

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3 CARL J. KUNASEK  
4 Chairman  
5 JIM IRVIN  
6 Commissioner  
7 WILLIAM A. MUNDELL  
8 Commissioner

9 In the matter of )

10 SCOTT A. GOULD )  
11 6006 North 21 Place )  
12 Phoenix, Arizona 85016, )

Respondent. )

) DOCKET NO. S-03275A-00-0000

) **ORDER TO CEASE AND DESIST,**  
) **ORDER OF RESCISSION, ORDER**  
) **FOR ADMINISTRATIVE PENALTIES**  
) **AND CONSENT TO SAME**

) DECISION NO. \_\_\_\_\_  
)  
)  
)

13 SCOTT A. GOULD ("GOULD") elects to permanently waive his right to a hearing and  
14 appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.*  
15 ("Securities Act") with respect to this Order ("Order"). GOULD admits the jurisdiction of the  
16 Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact  
17 and Conclusions of Law contained in this Order; and consents to the entry of this Order by the  
18 Commission.

19 **I.**

20 **FINDINGS OF FACT**

21 1. The Commission ordered GOULD to cease and desist from violations of the  
22 Securities Act on April 5, 1995. That decision, number 59055, also ordered GOULD to make a  
23 rescission offer to all investors who had purchased promissory notes ("Notes"). The unregistered  
24 Notes had been provided to investors in return for money, which GOULD used to fund construction  
25 loans. GOULD was not a registered securities salesman. GOULD consented to entry of the Cease  
26 and Desist Order and waived the hearing. GOULD was ordered to pay an administrative penalty of

1 \$5,000. That amount was reduced to \$1,000 after the rescission terms were met. GOULD paid  
2 \$145,000 in rescission to three investors.

3 2. The subpoena served in reference to the 1995 action required production of records  
4 including the Notes. GOULD identified 33 individuals and couples who had loaned him money and  
5 received a Note in return. The individuals included his parents, sister, grandmother, close friends  
6 and his brother-in-law's family members. GOULD failed to disclose to the Securities Division the  
7 names of some investors during its investigation. A number of these individuals have subsequently  
8 been identified.

9 3. After the Cease and Desist Order was issued by the Commission in 1995, GOULD  
10 continued to borrow money from individuals and to finance construction loans in the same fashion,  
11 thereby violating that prior Order. The money received from lenders was pooled with other investor  
12 funds and used to make loans to commercial builders of single-family residences. GOULD  
13 provided investors with unregistered promissory notes ("Notes") paying between 10% - 16% for  
14 use of their money. The commercial builders are charged interest rates ranging between 18% -  
15 21%. The funds received from investors for the Notes were placed into a bank account in the name  
16 of SCOTT A. GOULD and under the signatory power of GOULD.

17 4. GOULD has never provided investors with disclosure documents. Individuals  
18 investing money were not given a prospectus, offering circular or any essential information.  
19 GOULD failed to disclose the Cease and Desist Order to new investors. GOULD failed to provide  
20 any meaningful disclosure regarding the risks associated with investing in this venture, including but  
21 not limited to the risk that the entire principal amount could be lost.

22 5. GOULD never disclosed the exact nature and amount of security collateralizing  
23 the Notes. In particular, he did not tell investors that the loans to construction companies were  
24 secured by a mortgage or deed of trust on real estate in his name, and not in the investor's name.  
25 GOULD did not disclose to investors that their investments were not secured by a first lien on a  
26 single parcel of real estate containing a dwelling or other residential or commercial structure.





1 Order; such verification will contain the information specified in A.A.C. R14-4-308  
2 (B)(5).

3 f) If GOULD does not comply with this rescission order any outstanding balance shall be  
4 in default and immediately due and payable as restitution.

5 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that GOULD shall pay an  
6 administrative penalty in the amount of \$30,000.00. Payment shall be made in full by cashier's  
7 check, payable to the state of Arizona, on or before November 9, 2000.

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

9  
10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

11  
12  
13 \_\_\_\_\_  
CHAIRMAN COMMISSIONER COMMISSIONER

14  
15 IN WITNESS WHEREOF, I, Brian C. McNeil, Executive  
16 Secretary of the Arizona Corporation Commission, have  
17 hereunto set my hand and caused the official seal of the  
18 Commission to be affixed at the Capitol, in the City of  
19 Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2000.

20 \_\_\_\_\_  
21 BRIAN C. McNEIL  
22 Executive Secretary

23  
24 \_\_\_\_\_  
25 DISSENT

26 (KEM)

1 This document is available in alternative formats by contacting Shelly M. Hood, ADA  
2 Coordinator, voice phone number: 602/542-3931, email: [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

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1 CONSENT TO ENTRY OF ORDER BY THE COMMISSION  
2 AND WAIVER OF HEARING

3 SCOTT A. GOULD ("GOULD") acknowledges that he has been fully advised of his right  
4 to a hearing to present evidence and call witnesses. GOULD waives all hearing procedures and  
5 the right to appeal provided by the Securities Act of Arizona with respect to this Order to Cease  
6 and Desist, Order for Administrative Penalties ("Order") and Consent to Entry of Order  
7 ("Consent").

8 GOULD admits the jurisdiction of the Arizona Corporation Commission ("Commission")  
9 with respect to matters set forth in this Order and Consent.

10 GOULD neither admits nor denies the Findings of Fact and Conclusions of law contained  
11 in this Order and Consent.

12 GOULD agrees that, as a part of the settlement reached herein, he will not apply for  
13 registration as a securities dealer or salesman, or for licensure as an investment advisor or  
14 investment advisor representative, under the Securities Act of Arizona or the Investment  
15 Management Act of Arizona, at any time in the future.

16 GOULD states that his entry into this Consent is a voluntary act and that no promise was  
17 made nor coercion used to induce him to enter into it.

18 GOULD consents to the entry of this Order.

19 GOULD understands that this Consent does not preclude any other agency, officer of this  
20 State or its subdivision, from instituting other civil or criminal proceedings now or in the future.

21 While this Order settles all pending matters between GOULD and the Commission,  
22 GOULD understands that this Consent does not preclude the Commission from instituting other

23 ...

24 ...

25 ...

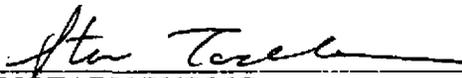
26 ...

1 administrative, civil, or criminal proceedings, now or in the future, based on facts not presently  
2 known by the Commission or matters which are not covered by the Order.

3  
4   
5 \_\_\_\_\_  
6 SCOTT A. GOULD

6 SUBSCRIBED TO AND SWORN BEFORE me this 7<sup>TH</sup> day of NOVEMBER,

7 ~~1998~~<sup>2000</sup>, by

8   
9 \_\_\_\_\_  
10 NOTARY PUBLIC

10 My Commission Expires:

11 9.9.2001