

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 DOCKETED**

AUG 18 2000

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

DOCKETED BY [Signature]

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

**DATE:** August 15, 2000

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

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

EXEMPT FROM PUBLIC ACCESS

AUG 18 2 39 PM '00

RECEIVED  
ARIZONA CORPORATION COMMISSION

A proposed default Order against Scott A. Gould ("Gould") is attached. In February 1998, the Securities 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 uses 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 consent Cease and Desist Order 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 6/14/95. 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.

Originator: Kathryn McCormick

AG Assigned: Robert Zumoff

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

6 In the matter of )

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

7 )  
8 SCOTT A. GOULD )  
6006 North 21<sup>st</sup> Street )  
Phoenix, Arizona 85016, )

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

9 )  
10 \_\_\_\_\_ Respondent. )

) **ORDER TO CEASE AND DESIST**  
) **ORDER FOR ADMINISTRATIVE**  
) **PENALTIES AND RESCISSION**  
) **ORDER**

11  
12 **I.**

13 **INTRODUCTION**

14 On May 1, 2000, the Securities Division ("Division") of the Arizona Corporation  
15 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order  
16 for Relief ("Notice") against the above Respondent. The Notice specified that Respondent would  
17 be afforded an opportunity for an administrative hearing on this matter upon filing a written  
18 request with Docket Control of the Commission within ten (10) days of receipt of the Notice.  
19 SCOTT A. GOULD ("GOULD") was served a copy of the Notice on May 12, 2000, by mailing a  
20 copy of the Notice to him via Certified Mail return receipt requested. The return receipt arrived at  
21 the Division on May 12, 2000. GOULD failed to request a hearing.

22 **II.**

23 **FINDINGS OF FACT**

24 1. GOULD is an individual whose last known address is 6006 North 21<sup>st</sup> Street,  
25 Phoenix, Arizona. During all pertinent times GOULD was conducting business involving the offer  
26 and sale of unregistered securities within or from the state of Arizona.

1           2.       The Commission ordered GOULD to cease and desist from violations of the  
2 Securities Act of Arizona ("Securities Act") on April 5, 1995. That decision, number 59055, also  
3 ordered GOULD to make a rescission offer to all investors who had purchased promissory notes  
4 ("Notes"). The unregistered Notes had been provided to investors in return for money, which  
5 GOULD used to fund construction loans. GOULD was not a registered securities salesman.  
6 GOULD consented to entry of the Cease and Desist Order and waived the hearing. GOULD was  
7 ordered to pay an administrative penalty of \$5,000. That amount was reduced to \$1,000 after the  
8 rescission terms were met. GOULD paid \$145,000 in rescission to three investors.

9           3.       The subpoena served in reference to the 1995 action required production of records  
10 including the Notes. GOULD identified 33 individuals and couples who had loaned him money and  
11 received a Note in return. The investors included his parents, sister, grandmother, close friends and  
12 his brother-in-law's family members. However, GOULD failed to disclose to the Division the  
13 names of other investors during the 1995 investigation. At least two of these individuals have  
14 subsequently been identified.

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

23           5.       GOULD has never provided investors with disclosure documents. Individuals  
24 investing money were not given a prospectus, offering circular or any essential information.  
25 GOULD simply told investors that their money was "quite safe." Under subpoena, GOULD  
26 provided the names, but no addresses, for individuals investing after the 1995 action. At least five

1 of these individuals have subsequently been identified. To date, the Division has not identified any  
2 losses due to the sale of the Post Hearing Notes.

3 6. GOULD was not a registered securities dealer in the state of Arizona during the time  
4 the above described offers and sales took place. He previously held a Series 63 and Series 7  
5 licenses. IDS Financial Services ("IDS") employed GOULD from September 1986, to October  
6 1992. In October 1992, IDS terminated GOULD's employment.

7 7. GOULD has borrowed money from individuals, signing Notes that were not  
8 registered as securities in the state of Arizona nor offered in reliance upon an available exemption  
9 from registration and not subject to a notice filing.

### 10 III.

#### 11 CONCLUSIONS OF LAW

12 1. The Commission has jurisdiction over these matters pursuant to Article XV of the  
13 Arizona Constitution and the Securities Act, Arizona Revised Statutes § 44-1801, *et seq.*

14 2. From on or about January 1993 to July 1998, GOULD offered and/or sold securities  
15 in the form of promissory notes, within and/or from Arizona.

16 3. The securities referred to above were not registered under A.R.S. §§ 44-1871  
17 through 44-1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been  
18 made under A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not  
19 offered or sold in exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule  
20 or order promulgated by the Commission. This conduct violates A.R.S. § 44-1841.

21 4. In connection with the offers to sell and the sale of securities, GOULD acted as a  
22 dealer and/or salesman within and/or from Arizona, although not registered pursuant to the  
23 provisions of Article 9 of the Securities Act. This conduct violates A.R.S. § 44-1842.

24 5. In connection with the offers and sales of securities within and/or from Arizona,  
25 GOULD directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue  
26 statements of material fact or omitted to state material facts which were necessary in order to make

1 the statements made not misleading in light of the circumstances under which they were made; and  
2 (iii) engaged in transactions, practices or courses of business which operated or would operate as a  
3 fraud or deceit upon offerees and investors. GOULDS' conduct includes, but is not limited to, the  
4 following:

- 5 a) GOULD violated the Cease and Desist Order signed by the Commission on April 5,  
6 1995, decision number 59055.
- 7 b) GOULD failed to disclose the Cease and Desist Order to new investors.
- 8 c) GOULD failed to provide investors with disclosure documents. Individuals  
9 investing money were not given a prospectus, offering circular or any essential  
10 information.
- 11 d) GOULD failed to provide any meaningful disclosure regarding the risks associated  
12 with investing in this venture, including but not limited to the risk that the entire  
13 principal amount could be lost.
- 14 e) GOULD failed to provide information regarding the identity of, and other material  
15 information about, the construction entity or entities that would be financed by the  
16 investment. Further, GOULD did not disclose the structure of the loan arrangements  
17 financed by the investment, or the terms of all contracts comprising the loan  
18 arrangement.
- 19 f) GOULD never disclosed the exact nature and amount of security collateralizing the  
20 notes. In particular, he did not tell investors that the loans to construction companies  
21 were secured by a mortgage or deed of trust on real estate in his name, and not in the  
22 investor's name.
- 23 g) GOULD told investors that their money was "quite safe" without any basis in fact  
24 for the statement.
- 25 6. This conduct violates A.R.S. § 44-1991.

26 ...

1 IV.

2 ORDER

3 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the  
4 Commission finds that the following Order is appropriate, in the public interest and necessary for the  
5 protection of investors.

6 1. IT IS HEREBY ORDERED, pursuant to Arizona Revised Statutes § 44-2032, that  
7 Respondent GOULD permanently cease and desist from violating the Securities Act.

8 2. IT IS FURTHER ORDERED, pursuant to Arizona Revised Statutes § 44-2036 that  
9 GOULD shall pay an administrative penalty of \$60,000. Payment shall be due upon entry of this  
10 Order. Payment shall be made by cashier's check to the "State of Arizona" for deposit in the  
11 General Fund of the state.

12 3. IT IS FURTHER ORDERED that GOULD make a rescission offer pursuant to  
13 A.R.S. § 44-2032, to any investor who purchased unregistered securities.

14 a) The written offer to repurchase, stating in reasonable detail the facts out of which  
15 liability arose, must be filed with, and receive prior approval from, the Director of  
16 Securities before distribution to the investors. The written offer to repurchase must be  
17 sent to the director for approval within 14 days of entry of this Order.

18 b) The offer to repurchase the securities shall include cash equal to the original amount of  
19 the investment together with interest on such amount for the period from the date of  
20 purchase payment to the date of repayment, such interest to be computed at the rate of  
21 10% per annum, less the amount of any income received on the securities.

22 c) The offer to repurchase shall be made within 10 days of the date of receipt of approval  
23 by the Director.

24 d) The offer to repurchase shall state that the purchaser may accept such offer within 30  
25 days after the date of receipt thereof.

1 e) When the rescission offer has been completed and the appropriate funds paid, GOULD  
2 must verify to the Director that the rescission offer was made in accordance with this  
3 Order; such verification will contain the information specified in A.A.C. R14-4-308  
4 (B)(5).

5 4. IT IS FURTHER ORDERED that upon failure to make payment when due, interest  
6 shall accrue at the statutory rate of ten percent per annum.

7 5. IT IS FURTHER ORDERED that, within 14 days of this Order, GOULD shall  
8 provide to the Division the names and addresses of all investors who purchased Notes since April 5,  
9 1995, the date of the Commission's earlier Order.

10  
11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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14  
15 CHAIRMAN

COMMISSIONER

COMMISSIONER

16  
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
18 Executive Secretary of the Arizona Corporation  
19 Commission, have hereunto set my hand and  
20 caused the official seal of the Commission to be  
21 affixed at the Capitol, in the city of Phoenix,  
22 this \_\_\_\_ day of September, 2000.

23  
24  
25  
26  
BRIAN C. McNEIL

24 DISSENT

25 (KEM)

1 This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA  
2 coordinator, voice phone number 602-542-0838, E-mail [csandoval@cc.state.az.us](mailto:csandoval@cc.state.az.us).

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25 N:Enforce/Cases/MGFFunding.KM/Pleading/Default.

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