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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

NOV 13 2009

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

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IN THE MATTER OF:

DOCKET NO. S-20623A-08-0477

HELMUT WEBER (d/b/a Weber Capital Management) and VERA WEBER, husband and wife;

DECISION NO. 71331

Respondents.

OPINION AND ORDER

DATES OF PRE-HEARING CONFERENCES:

November 5, 2008 and January 21, 2009

DATE OF HEARING:

March 16, 2009

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Ms. Aikaterine Vervilos, Staff Attorney, Securities Division, on behalf of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 12, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order ("T.O.") and Notice of Opportunity for Hearing ("Notice") against Helmut Weber dba Weber Capital Management ("WCM") and Vera Weber, husband and wife (collectively "Respondents") in which the Division alleged multiple violations of the Arizona Securities Act ("ACT") in connection with the offer and sale of securities in the form of commodity investment contracts and/or investment contracts.

The Respondents were duly served with copies of the T.O. and Notice.

On October 6, 2008, a request for hearing was filed by the Respondents.

On October 7, 2008, by Procedural Order, a pre-hearing conference was scheduled on November 5, 2008.

1 On November 5, 2008, the Division and Respondents appeared through counsel. Issues
2 concerning the case were discussed along with future scheduling matters. It was also disclosed that
3 Mr. Weber had been indicted as the result of an action brought by the Attorney General's office.
4 Subsequently, counsel agreed to the scheduling of a status conference and a hearing.

5 On November 7, 2008, by Procedural Order, a status conference and a hearing were scheduled
6 on January 21, 2009, and on March 16, 2009, respectively.

7 On November 21, 2008, counsel for Respondents filed a Motion to Withdraw ("Motion") as
8 counsel pursuant to ER 1.16 stating that he had been unable to finalize the details of his
9 representation and had provided notice to his clients of the previously scheduled status conference
10 and hearing.

11 On December 2, 2008, by Procedural Order, Respondents' counsel was granted leave to
12 withdraw.

13 On January 21, 2009, at the status conference, the Division appeared through counsel.
14 Neither Helmut nor Vera Weber appeared. Counsel for the Division indicated that Mr. Weber had
15 left Arizona. Since Respondents had requested a hearing, it was determined that the hearing go
16 forward as scheduled.

17 On March 16, 2009, a full public hearing was commenced before a duly authorized
18 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was
19 present with counsel. Respondents failed to appear. Following the presentation of evidence, the
20 matter was taken under advisement pending submission of a Recommended Opinion and Order to the
21 Commission.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25 **FINDINGS OF FACT**

26 1. Helmut Weber is an individual who, at all relevant times herein, was a resident of
27 Maricopa County, Arizona, and who did business as WCM.
28

1 2. Vera Weber is an individual who, at all relevant times herein, was the spouse of
2 Mr. Weber and was a resident of Maricopa County, Arizona.

3 3. In support of the allegations raised in the T.O. and Notice with respect to Mr. Weber's
4 alleged violations of the Act, the Division called four witnesses as follows: John Madland and Phillip
5 Hinke, investors; Robert Eckert, a special investigator with the Division; and Gary Mengel, a
6 certified public accountant with the Division.

7 4. Mr. Madland, who is from Scottsdale, Arizona, testified that he first met Mr. Weber in
8 approximately 2000 at a business meeting. Subsequently, he got to know Mr. Weber better when he
9 moved to Scottsdale from California sometime in 2005 and Mr. Weber contacted him several times.
10 (Tr. at p. 8)

11 5. In approximately December 2005, Mr. Madland met with Mr. Weber at a
12 neighborhood coffee shop where Mr. Weber related that he had "changed careers" and was trading in
13 foreign currencies.¹ Mr. Weber further explained that it had been a "good opportunity for him."
14 (Tr. at p. 9)

15 6. Mr. Madland testified that during a subsequent conversation, Mr. Weber related that
16 he had "mastered" Forex and could make a lot of money in it. (Tr. at p. 10)

17 7. On December 29, 2005, after telling Mr. Madland that he was going to seek investors
18 to trade in Forex, Mr. Weber emailed Mr. Madland. Mr. Weber's email contained an example which
19 purportedly showed Mr. Weber earning approximately \$6,800 from Forex trading from a \$9,900
20 investment during the month of November 2005. (Tr. at p. 8) (Ex. S-4)

21 8. Mr. Madland testified that he learned about a year later that the example of Mr.
22 Weber's purported profits from Forex trading was a practice run and not real profits. (Tr. at p. 12)

23 9. On December 31, 2005, Mr. Madland and his wife signed an agreement with WCM
24 and invested \$10,000 with Mr. Weber, relying on Mr. Weber's representations that he was "the finest
25 trader in the world." (Tr. at p. 13)

26 10. According to Mr. Madland, Mr. Weber made him feel that he was "going to make a lot
27

28 ¹ "Forex" or "FX" are the commonly used terms for the foreign exchange market for the world's currency.

1 of money, quit your job kind of money, yeah.” (Tr. at p. 14)

2 11. Mr. Madland was led to believe that only five percent of his principal would be
3 invested at one time to prevent losses and that profits would accumulate in his account. As a result,
4 he agreed to invest the funds for at least one year. (Tr. at p. 16)

5 12. Mr. Madland referred a number of his friends to Mr. Weber and they also invested
6 with him in Forex.

7 13. Ostensibly, 2006 was a great year for Mr. Weber’s Forex trading and the weekly or
8 monthly reports which were provided to Mr. Madland showed that his investment after one year had
9 increased by approximately 50 percent in value. (Tr. at p. 16)

10 14. Beginning in 2007, Mr. Madland testified that projected earnings decreased from 50
11 percent annually to only 8 percent or 10 percent. After Mr. Weber stopped sending monthly reports
12 in June 2007, Mr. Madland spoke with his friends who had also invested with Mr. Weber. After
13 speaking with them, Mr. Madland and his friends requested their money be returned. (Tr. at p. 17)

14 15. Mr. Madland testified that Mr. Weber reacted to the requests of the investor group by
15 “accusing us of being disloyal because we weren’t giving him the whole year to make his money.”
16 (Tr. at p. 17)

17 16. Mr. Madland testified that “nobody got a penny back” after he and the other investors
18 asked for their money back. (Tr. at p. 18)

19 17. On October 15, 2007, Mr. Weber sent Mr. Madland an email which purportedly
20 represented an account statement which illustrated trading during September 2007 with an investment
21 of \$50,000 being increased to \$64,000 using “a more aggressive strategy.” (Tr. at p. 19)

22 18. Mr. Madland does not know whether his investment was actually used for Forex
23 trading. At no time did he authorize Mr. Weber to withdraw any portion of his investment for
24 purposes other than investing. (Tr. at p. 20)

25 19. When Mr. Madland last tried to contact Mr. Weber in January or February of 2008 by
26 email, he received a prompt response from Mr. Weber indicating that he had been “traveling the
27 world” and would call when he got back to his office. Mr. Madland testified to his understanding
28 that Mr. Weber has fled to Germany from where he was originally. (Tr. at p. 25)

1 20. Mr. Hinke testified that he was introduced to Mr. Weber by a neighbor who was one
2 of the other investors in Mr. Weber's Forex trading program. (Tr. at p. 27)

3 21. Although Mr. Hinke's initial contact with Mr. Weber was at a social gathering, a
4 couple of days later he visited Mr. Weber at his home which also doubled as his office. Mr. Hinke
5 got the impression from this visit that Mr. Weber had done well in business and was financially
6 sound. (Tr. at p. 28)

7 22. Mr. Weber informed Mr. Hinke that he maintained his office in his home because a lot
8 of Forex trading takes place at night because the Forex trading business is conducted for 24 hours a
9 day.

10 23. Based on Mr. Weber's presentation in his home office where he had a computer with
11 six flat-screened monitors, Mr. Hinke became impressed with Mr. Weber's technical understanding
12 of Forex trading and Mr. Weber's self-described investment style of "reduced risk" where he did not
13 "go for home runs." (Tr. at p. 29)

14 24. Mr. Hinke described Mr. Weber as coming across very well and believed him to be an
15 intellectual who was making five percent a month on his Forex investments. (Tr. at p. 29)

16 25. Mr. Hinke testified that although Mr. Weber did not guarantee a rate of return, he was
17 almost sure it was five percent a month and remembered that 60 percent a year "clicked with me."
18 (Tr. at p. 30)

19 26. At this point, Mr. Hinke decided to invest \$20,000 expecting a high rate of return and
20 relied on Mr. Weber to make the Forex investments.

21 27. On December 15, 2006, Mr. and Mrs. Hinke signed an agreement with WCM to trade
22 in Forex for them. The agreement also authorized Mr. Weber to deduct a 25 percent commission
23 from all profits in excess of the initial investment on a quarterly basis. (Tr. at p. 31) (Ex. S-5)

24 28. Although Mr. Hinke was aware that there were risks with this form of investment, Mr.
25 Weber made him feel comfortable because it appeared that he knew what he was doing and Mr.
26 Hinke believed he would earn approximately five percent per month on his investment.

27 29. In order to effectuate his investment with Mr. Weber, Mr. Hinke transferred \$20,000
28 by wire into Mr. Weber's account as directed in an email. (Tr. at p. 32) (Ex. S-6)

1 30. Mr. Hinke recalled receiving emails which had Excel spreadsheets attached to them
2 from Mr. Weber on a periodic basis. These spreadsheets purportedly detailed the Forex trades which
3 Mr. Weber had been making, along with charges for commissions.

4 31. At one point, Mr. Hinke was satisfied with his investment because he believed that
5 Mr. Weber's spreadsheets showed that he was earning a monthly return of approximately two to three
6 percent, which Mr. Hinke believed would equate to a rate return of approximately 25 percent a year.
7 (Tr. at p. 35) (Ex. S-7)

8 32. Sometime during July 2007, Mr. Weber, in an email to Mr. Hinke, suggested a new
9 internet website which he was developing for use with a group of doctors that would produce greater
10 returns for investors. (Tr. at p. 38 and 39)

11 33. Subsequently, Mr. Hinke recalled that Mr. Weber told him that the minimum
12 investment in this more aggressive program would be \$25,000. However, if Mr. Hinke would "give
13 him a testimonial," Mr. Weber would reduce the minimum investment for Mr. Hinke to \$10,000.
14 (Tr. at p. 40)

15 34. At or about this time, Mr. Hinke became concerned with his investment in Mr.
16 Weber's program because of "derogatory comments against the group that I was participating in."
17 (Tr. at p. 40)

18 35. Shortly thereafter, Mr. Weber inquired by email whether Mr. Hinke wished to invest
19 more money with the new group and inquired whether he had any friends who would also like to
20 invest. (Tr. at p. 41)

21 36. Mr. Hinke subsequently contacted his neighbor who had introduced him to Mr. Weber
22 about the new investment program. His neighbor informed him that other members of the group
23 were concerned with their investments because Mr. Weber had stopped communicating with them
24 and meeting with them. (Tr. at p. 41)

25 37. As a result, Mr. Hinke did not make any more investments with Mr. Weber and in
26 December 2007 asked for his money back. (Tr. at p. 41)

27 38. Mr. Weber responded to Mr. Hinke's request telling him that 70 percent of his
28 principal was gone and that if he took any money the entire amount would be lost. (Tr. at p. 42)

1 39. Subsequently, Mr. Hinke told Mr. Weber to stop all trading and to return his funds.
2 (Tr. at p. 42)

3 40. Mr. Hinke did not receive any money back and did not get an accounting of where his
4 money went. (Tr. at p. 42)

5 41. Mr. Eckert conducted the Division's investigation of Mr. Weber dba WCM after the
6 Division received a written complaint from several investors. (Tr. at p. 47)

7 42. Besides the two investors who testified during the proceeding, Mr. Eckert interviewed
8 approximately seven other investors who invested with Mr. Weber.

9 43. According to Mr. Eckert, Mr. Weber conducted his offering with all of the investors in
10 a similar manner telling them that he had been investing in Forex for a while and that he had been
11 successful. Mr. Weber then invited prospective investors to invest with him and promised to make
12 them a profit on their investments. (Tr. at p. 49)

13 44. Mr. Weber conducted all of the investment activity for the investors in Forex.

14 45. During Mr. Eckert's investigation, he was told by one investor, Brent Keil, that Mr.
15 Weber guaranteed that an investment in Forex was guaranteed to make a profit. (Tr. at p. 50)

16 46. Mr. Weber represented to investors that their monies were going to be used for
17 investing in the Forex market and for no other purpose. (Tr. at p. 50)

18 47. During Mr. Eckert's investigation of Mr. Weber, Mr. Eckert was unable to find any
19 sources of income for him during the Forex offering. Mr. Eckert also checked with the Department
20 of Economic Security regarding reportable wages and found that none were reported for Mr. Weber.
21 (Tr. at p. 51)

22 48. The Division's investigation also revealed that neither Mr. Weber nor WMC was
23 registered as a securities salesman or as a dealer. (Tr. at p. 51) (Ex. S-1)

24 49. During the course of the Division's investigation of Mr. Weber, Mr. Eckert reviewed
25 two websites, one captioned *webercapitalmanagement.com* and the other *WeberFX.com*, which both
26 promoted investments in foreign currency and featured photographs of Mr. Weber. (Ex. S-8 and S-9)

27 50. At the *webercapitalmanagement.com* website, Mr. Weber's picture is featured and he
28 is termed the "Principal" of the firm. At the *WeberFX.com* website, Mr. Weber's picture is again

1 shown and the caption above his photo reads "Chief Strategist." (Ex. 8 and 9)

2 51. Mr. Eckert pointed out that the *WeberFx.com* website discussed earning investors
3 three to five percent per month with as little as a \$25,000 investment. (Tr. at p. 54) (Ex. S-9)

4 52. A review of several Forex trading accounts established by Mr. Weber confirmed that
5 he was the only individual authorized to trade in those accounts. (Tr. at p. 57).

6 53. Mr. Eckert's investigation revealed that Mr. Weber sent an email to Mr. Madland
7 purportedly reflecting profits on a \$50,000 investment in Forex made by Mr. Weber during the month
8 of September 2007 was nothing more than a fictitious "virtual account" which a Forex website
9 offered to individuals to practice on as if they were actually trading in Forex. (Tr. at p. 59) (Ex. S-3)

10 54. Mr. Eckert testified that his investigation revealed that only one investor recovered his
11 funds back and he was paid in full by Mr. Weber after threatening to complain to authorities.
12 (Tr. at p. 60)

13 55. Gary Mengel, a senior forensic accountant with the Division, reviewed Mr. Weber's
14 financial records during the course of the Division's investigation in this proceeding. These records
15 included subpoenaed bank records and trading account records. (Tr. at p. 67)

16 56. Mr. Mengel created a report which he compiled using Mr. Weber's bank records along
17 with some third-party records that were subpoenaed. Mr. Mengel's report encompasses a time frame
18 from January 18, 2006, through July 15, 2008.

19 57. According to Mr. Mengel, during the relevant time frame, Mr. Weber took in
20 \$216,504 from investors, with only one investor recovering back approximately \$2,500. (Tr. at p. 70)
21 (Ex. S-16)

22 58. In Mr. Mengel's opinion, the money paid back to the one investor came from other
23 investors' funds similar to a Ponzi payment. (Tr. at p. 70)

24 59. Of the funds that flowed into Mr. Weber's accounts which were analyzed by Mr.
25 Mengel, \$140,324 or 51.5 percent of the monies was dispersed to Mr. Weber. (Tr. at p. 71)

26 60. Mr. Mengel's further study of Mr. Weber's accounts revealed that he also withdrew
27 approximately \$4,600 through ATM withdrawals and dispersed approximately \$22,000 to his wife.
28 (Tr. at p. 71 and 72)

1 61. Mr. Mengel indicated that his analysis of Mr. Weber's trading activities indicated that
2 during the relevant time frame, Mr. Weber suffered an overall loss in his Forex trading activities. (Tr.
3 at p. 73)

4 62. Mr. Mengel also testified that, based on the accounts he analyzed, Mr. Weber
5 expended approximately \$52,000 for personal expenses. (Tr. at p. 73)

6 63. In conclusion, Mr. Mengel indicated that his review of Mr. Weber's records
7 established that Mr. Weber owes investors \$214,017 for their lost investments. (Tr. at p. 74)

8 64. Based upon the record, a preponderance of the evidence establishes that Mr. Weber
9 committed multiple violations of the Act by offering and selling securities in the form of commodity
10 investment contracts and/or investment contracts in a fraudulent manner and utilized investor funds
11 for personal expenses for himself and for his wife. His actions resulted in losses to investors of
12 \$214,017. Additionally, there is ample evidence in the record that the marital community benefited
13 from Mr. Weber's activities in the offer and sale of these unregistered securities.

14 65. Respondents presented no evidence to rebut the evidence presented by the Division
15 and they should be held liable for full restitution and an administrative penalty.

CONCLUSIONS OF LAW

17 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona
18 Constitution and A.R.S. § 44-1801, et seq.

19 2. The investments in the form of commodity investment contracts and/or investment
20 contracts sold by Respondent Helmut Weber were securities within the meaning of A.R.S. § 44-1801.

21 3. The securities were neither registered nor exempt from registration, in violation of
22 A.R.S. § 44-1841.

23 4. Respondent Helmut Weber acted as a dealer and/or salesman within the meaning of
24 A.R.S. § 44-1801(9) and (22).

25 5. The actions and conduct of Respondent Helmut Weber constitute the sale of securities
26 within the meaning of A.R.S. § 44-1801(21).

27 6. Respondent Helmut Weber sold unregistered securities within or from Arizona in
28 violation of A.R.S. § 44-1841.

1 IT IS FURTHER ORDERED that the Commission shall disburse the funds on a *pro-rata*
2 basis to investors shown on the records of the Commission. Any restitution funds that the
3 Commission cannot disburse because an investor refuses to accept such payment, or any restitution
4 funds that cannot be disbursed to an investor because the investor is deceased and the Commission
5 cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at
6 the time of distribution, shall be disbursed on a *pro-rata* basis to the remaining investors shown on
7 the records of the Commission. Any funds that the Commission determines it is unable to or cannot
8 feasibly disburse shall be transferred to the general fund of the State of Arizona.

9 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
10 A.R.S. § 44-2036, Respondents Helmut Weber and Vera Weber to the extent allowable pursuant to
11 A.R.S. § 25-215, jointly and severally, shall pay as and for administrative penalties: for the violation
12 of A.R.S. § 44-1841, the sum of \$10,000; for the violation of A.R.S. § 44-1842, the sum of \$10,000;
13 and for the violation of A.R.S. § 44-1991, the sum of \$20,000, for a total of \$40,000. The payment
14 obligations for these administrative penalties shall be subordinate to any restitution obligations
15 ordered herein and shall become immediately due and payable only after restitution payments have
16 been paid in full or upon Respondents' default with respect to Respondents' restitution obligations.

17 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
18 A.R.S. § 44-2036, that Respondents Helmut Weber and Vera Weber, to the extent allowable pursuant
19 to A.R.S. § 25-215, jointly and severally, shall pay the administrative penalty ordered hereinabove in
20 the amount of \$40,000 payable by either cashier's check or money order payable to "the State of
21 Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for
22 the State of Arizona.

23 IT IS FURTHER ORDERED that if Respondents Helmut Weber and Vera Weber fail to pay
24 the administrative penalty ordered hereinabove, any outstanding balance plus interest at the
25 maximum level amount may be deemed in default and shall be immediately due and payable, without
26 further notice.

27 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
28 any outstanding balance shall be in default and shall be immediately due and payable without notice

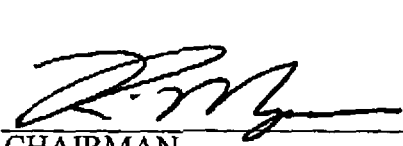
1 or demand. The acceptance of any partial or late payment by the Commission is not a waiver of
2 default by the Commission.

3 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission
4 for its cost of collection and interest at the maximum legal rate.

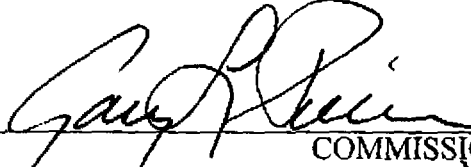
5 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
6 the Commission may bring further legal proceedings against the Respondent(s), including application
7 to the Superior Court for an Order of Contempt.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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12 CHAIRMAN



COMMISSIONER

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COMMISSIONER

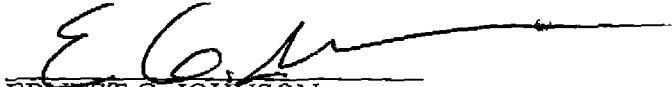


COMMISSIONER



COMMISSIONER

16 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
17 Executive Director of the Arizona Corporation Commission,
18 have hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this 13th day of November, 2009.

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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23 DISSENT _____

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26 DISSENT _____
MES:db

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SERVICE LIST FOR: HELMUT WEBER (d/b/a Weber Capital Management)
and VERA WEBER, husband and wife

DOCKET NO.: S-20623A-08-0477

Helmut and Vera Weber
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