



1 Mr. Michael V. Black, on behalf of Mr. Steven L. Shook; and

2 Ms. Norma Martens, Assistant Attorney General, and Ms.  
3 Pamela Johnson, Special Assistant Attorney General, on behalf  
4 of the Securities Division of the Arizona Corporation  
Commission.

5 **BY THE COMMISSION:**

6 On April 16, 1998, the Securities Division ("Division") of the Arizona Corporation  
7 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order  
8 for Relief ("Notice") against Buckhorn Financial Services, Inc., a Nevada Corporation, dba Buckhorn  
9 Financial Service of Arizona ("Buckhorn"), Mr. Joseph K. Hilyard, Mr. Michael Lee Mathis, Safe  
10 Keeping, Inc., a Nevada Corporation, dba Safe Keeping Depository, Inc. ("Safe Keeping") and Mr.  
11 Steven L. Shook in which the Division alleged multiple violations of the Securities Act ("Act") in  
12 connection with the offer and sale of investments involving "joint business ventures" in the form of  
13 investment contracts, evidences of indebtedness or certificates of interest or participation in any  
14 profit-sharing agreement.<sup>1</sup>

15 All Respondents named in the above-captioned proceeding were duly served with copies of  
16 the Notice to which timely requests for hearing were filed by all Respondents.

17 On May 1, 1998, the Commission, by Procedural Order, scheduled the above-captioned  
18 proceeding for hearing on May 21, 1998.

19 On May 21, 1998, a full public hearing was convened as scheduled. The Buckhorn and  
20 Shook Respondents were present with counsel. The Division was also present with counsel. At the  
21 outset of the proceeding, the Respondents requested time for discussions with the Division with  
22 respect to the allegations contained in the Notice. Following these discussions, it was indicated that  
23 the parties were negotiating to enter into Consent Orders which would be submitted to the  
24 Commission for its approval. The parties also requested that a hearing date be scheduled after the  
25 middle of July to resolve any outstanding issues if necessary.

26 Pursuant to our June 3, 1998, Procedural Order, a hearing was scheduled for July 23, 1998.

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28 <sup>1</sup> Hereinafter, Buckhorn, Mr. Hilyard and Mr. Mathis maybe collectively referred to as the "Buckhorn  
Respondents" and Safe Keeping and Mr. Shook as the "Shook Respondents".

1 Subsequently, the hearing was continued on a number of occasions due to scheduling conflicts and  
 2 also because the Consent Orders with respect to the Buckhorn Respondents and Shook Respondents  
 3 were not approved until August 1998. On August 6, 1998, the Commission issued Decision No.  
 4 61041, the Consent Order with respect to the Shook Respondents. On August 26, 1998, the  
 5 Commission issued Decision No. 61081, the Consent Order with respect to the Buckhorn  
 6 Respondents.

7 Although a hearing had been scheduled for September 23, 1998, following the issuance of  
 8 Decision Nos. 61041 and 61081, additional scheduling conflicts required the proceeding to be  
 9 continued again.

10 On November 30, 1998, the hearing was reconvened before a duly authorized Hearing Officer  
 11 of the Commission at its offices in Phoenix, Arizona in order to resolve the remaining issues of  
 12 restitution and penalties. At that time, the Shook Respondents appeared with Counsel. The  
 13 Buckhorn Respondents did not enter an appearance.<sup>2</sup> The Division was also present and represented  
 14 by counsel. Testimony was taken and a number of exhibits were admitted into evidence during the  
 15 course of the proceeding. Following the conclusion of the hearing, closing memoranda were  
 16 submitted on December 23, 1998. The matter was then taken under advisement pending submission  
 17 of a Recommended Opinion and Order to the Commission.

18 \* \* \* \* \*

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

21 **FINDINGS OF FACT**

22 1. On April 16, 1998, the Commission issued the Notice with respect to the above-  
 23 captioned Respondents.

24 2. On August 6, 1998, the Commission issued Decision No. 61041 an Order to Cease  
 25 and Desist, which had been consented to by Mr. Steven L. Shook individually and as President of  
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27 <sup>2</sup> At the outset of the hearing on November 30, 1998, counsel for the Buckhorn Respondents provided  
 28 notice to the Commission that he had withdrawn as their counsel. The Special Assistant Attorney General representing  
 the Division advised the presiding Hearing Officer that she had received telephone calls from Mr. Hilyard and Mr. Mathis  
 indicating that they would not attend the proceeding.

1 Safe Keeping, Inc.

2 3. On August 26, 1998, the Commission issued Decision No. 61081, an Order to Cease  
3 and Desist, which had been consented to by Mr. Joseph K. Hilyard individually and as President of  
4 Buckhorn and Mr. Michael Lee Mathis.

5 4. Decision Nos. 61041 and 61081 are hereby incorporated by reference. In those  
6 Decisions, the Shook Respondents and the Buckhorn Respondents, respectively, were found to have  
7 violated the Act by: offering and selling unregistered or nonexempt securities within or from  
8 Arizona; acting as unregistered dealers or salesmen; and committing fraud in the transactions.

9 5. The Buckhorn Respondents and the Shook Respondents were ordered to fully  
10 cooperate with the Division and to provide an accounting to the Commission in the aforementioned  
11 Decisions. The Commission retained jurisdiction in order to determine the extent of administrative  
12 penalties to be assessed, and the total amount of restitution to be made.<sup>3</sup>

13 6. Although the Shook Respondents and the Buckhorn Respondents were ordered to  
14 provide an accounting which would enable the Division to identify investors and the amount of their  
15 investments and their distributions, only the Buckhorn Respondents came forth with any financial  
16 records. The Shook Respondents failed to do so in violation of Decision No. 61041.

17 7. The records provided by the Buckhorn Respondents established that they collected  
18 \$11,906,494.72 from over 400 investors.

19 8. The Division's investigation revealed that before the joint venture offering which  
20 included the Shook Respondents, the Buckhorn Respondents had been involved in an earlier offering  
21 known as United States Business Owners' Association ("USBOA") which was a promissory note  
22 program.

23 9. The record established that a number of investors in USBOA exchanged their  
24 promissory note investments in mid-1997 for the joint ventures being promoted by the Buckhorn and  
25 Shook Respondents, utilizing the new Buckhorn Joint Venture Agreements ("JV Agreements") which  
26 referenced "a safe-keeping depository account" and the "attached Warranty Agreement" provided by  
27

28 <sup>3</sup> According to Decision No. 61081, restitution would not exceed \$11,906,194.72.

1 the Shook Respondents.

2 10. The Warranty Agreement purportedly guaranteed the return of an investor's principal  
3 and his profits by means of a Safe Keeping Lien given by the Buckhorn Respondents to investors to  
4 secure their investments by means of Certificates of Deposit ("CDs") in the amount of \$50,000,000  
5 which had allegedly been deposited in an account with Safe Keeping.

6 11. There is no evidence that the Shook Respondents were in anyway connected with the  
7 USBOA promissory note offering or any other earlier offering that the Buckhorn Respondents were  
8 involved in prior to the exchange investment program which utilized the Buckhorn JV Agreements.

9 12. There is evidence that on May 28, 1997, Mr. Shook opened two separate accounts  
10 with a Scottsdale branch of the Bank of America, one which was titled "Buckhorn Financial Services  
11 of Arizona" and upon which it was indicated that Mr. Shook was the sole proprietor and a second  
12 which was titled "USBOA" upon which Mr. Shook's name again appeared as the sole proprietor.  
13 These documents also indicated an individual by the name of Mr. Ben W. Rutan was a cosigner on  
14 both accounts.

15 13. According to Mr. Mark Klamrzynski, a Division Certified Public Accountant, Mr.  
16 Hilyard provided information to the Division indicating that on or about July 1, 1997, approximately  
17 \$3,955,000 from three Texas USBOA bank accounts was transferred to Arizona with about \$2.9  
18 million going to the Buckhorn account and approximately \$1,000,000 to the USBOA account.

19 14. In December 1997, Mr. Hilyard opened a separate account for Buckhorn Financial  
20 Services, Inc. which again had Mr. Ben W. Rutan as a cosigner.

21 15. Mr. Klamrzynski was able to trace funds from the USBOA accounts in Texas which  
22 were pooled with investor funds in the first Buckhorn account in Arizona.

23 16. Based on the bank records, Mr. Klamrzynski learned that the Buckhorn Respondents  
24 employed independent contractors who secured investors and were paid commissions for their  
25 efforts. The evidence established that these independent contractors (some of whom testified in the  
26 proceeding) invested their own funds in USBOA or Buckhorn and brought family members and  
27 friends into these offerings.  
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1 17. Mr. Klamrzynski found unexplained and substantial payments were made to the  
 2 individual Respondents, but primarily to Mr. Shook who received approximately \$2,054,050 and  
 3 Safe Keeping, which received approximately \$1.4 million. These sums were transferred by means of  
 4 wire or telephone transfers and cashier's checks.<sup>4</sup>

5 18. Of the approximately \$8,000,000 collected by the Buckhorn offering, Mr. Mathis, Mr.  
 6 Hilyard and an entity they controlled received approximately \$1,250,000.

7 19. Investors received approximately \$2.7 million in the form of distributions from the  
 8 Buckhorn Respondents.

9 20. Mr. Klamrzynski was unable to discern any deposits with the Buckhorn or Shook  
 10 Respondents which could be credited to any business activity related to the loans purportedly made to  
 11 finance small business development described in the JV Agreements.

12 21. Based on the record, there is strong evidence that Mr. Shook benefited the most from  
 13 his relationship with the Buckhorn Respondents.

14 22. There is ample evidence in the form of powers of attorney signed by a number of the  
 15 investors in the USBOA program that they exchanged their promissory notes for the JV Agreements  
 16 offered by Buckhorn. In several instances these investors, some of whom testified during the  
 17 proceeding, indicated that they relied upon the representations of Mr. Shook or other individuals  
 18 connected with the Buckhorn Respondents as to the security for their investments because of the CDs  
 19 in the amount of \$50,000,000 purportedly backing the investment.

20 23. It is clear that Dr. Cecil Todd, a minister from Missouri who had invested in USBOA,  
 21 was induced to invest in Buckhorn after speaking with Mr. Shook concerning the safety of his  
 22 investment due to the purported \$50,000,000 in CDs.

23 24. Based on the evidence, it is clear that investors relied upon the Shook Respondents'  
 24 Warranty Agreement which described the CDs and contained the following wording: "This warranty  
 25 is attached to and made a part of the JV for all intents and purposes." It was signed by Mr. Shook as  
 26 President of Safe Keeping and Mr. Hilyard as President of Buckhorn.

27 \_\_\_\_\_  
 28 <sup>4</sup> Although Safe Keeping was to receive a fee of one percent of the monies collected for providing the  
 CDs as security for investors, these monies far exceed that amount.

1 25. The Lien provided by the Shook Respondents was signed by Mr. Shook as the  
 2 President of Safe Keeping, Inc. to further provide investors with a sense of security. Additionally,  
 3 although the Shook Respondents represented their independence from the Buckhorn Respondents  
 4 with an accompanying "Statement of Position" which was designed to convey a message to investors  
 5 that Safe Keeping was an independent party that was not connected to either the investor or  
 6 Buckhorn, the evidence did not support this representation.

7 26. The weight of the evidence and more particularly the movement of cash established  
 8 that there was a clear relationship between the Buckhorn and Shook Respondents which was not  
 9 disclosed to either USBOA investors or to investors in the purported joint ventures offered by  
 10 Buckhorn.

11 27. The Division, in its closing memorandum, requested that the Commission hold the  
 12 Buckhorn Respondents and the Shook Respondents jointly and severally liable for restitution of up to  
 13 \$8,885,361.64 to all investors as identified in Decision No. 61041 and Decision No. 61081,  
 14 respectively, from the inception of the Buckhorn Respondents' dealings with the Shook Respondents  
 15 in May 1997 through April 1998 when some deposits of investor funds were made. Included within  
 16 the Division's requested restitution amount are the monies, approximately \$3,955,219, which  
 17 represent investments by USBOA investors exchanged for the Buckhorn offering.

18 28. Additionally, the Division is requesting that the Commission order an administrative  
 19 penalty in the amount of \$140,000 be assessed against the Buckhorn Respondents and the Shook  
 20 Respondents jointly and severally for the multiple violations of the Act.

21 29. During the restitution/penalty phase of this proceeding, the Buckhorn Respondents  
 22 presented no evidence to rebut the Division's evidence. With respect to the Shook Respondents,  
 23 although they were present during the proceeding, they called no witnesses and presented only one  
 24 document<sup>5</sup> into evidence in rebuttal to the Division's presentation of evidence.

25 30. Mr. Shook's counsel chose instead to argue primarily that pursuant to A.R.S. § 44-  
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27 <sup>5</sup> This is a letter from Safe Keeping to the Buckhorn Respondents signed by Mr. Shook purportedly  
 28 terminating the warranty and lien arrangement on March 31, 1998. However, it does not appear that the Shook  
 Respondents provided any such notice to investors until at the earliest, June 19, 1998, when Safe Keeping's attorney  
 wrote a letter to "All Joint Venture Partners of Buckhorn Financial, Inc."

1 2000 Mr. Shook was "a covered person" who, in a private action where a final judgement is entered,  
 2 is liable solely for that portion of the judgement that corresponds to the percentage of responsibility  
 3 of a "covered person". This would essentially absolve him personally of liability with respect to  
 4 monies collected from USBOA investors and also absolve him personally of a percentage of the  
 5 liability with respect to investors in the Buckhorn offering. Safe Keeping joined in this argument.

6 31. However, Mr. Shook, in Decision No. 61041, consented to the Commission's  
 7 jurisdiction and since this proceeding was an administrative action brought by the Commission and  
 8 not a private action in a civil proceeding, we do not agree with his argument.

9 32. Based upon our review of the record herein, Decision Nos. 61041 and 61081, and after  
 10 reviewing the Division's arguments as presented in its Post-Hearing Memorandum, it is clear that Mr.  
 11 Shook through Safe Keeping acted in concert with Mr. Hilyard and Mr. Mathis who were the  
 12 controlling persons behind Buckhorn, and as such they should bear joint and several liability for the  
 13 restitution and administrative penalties which we order hereinafter.

#### 14 CONCLUSIONS OF LAW

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

17 2. The investments in the joint venture agreements, warranties and liens constitute  
 18 securities in the form of investment contracts and evidences of indebtedness pursuant to A.R.S. § 44-  
 19 1801 (23).

20 3. The securities were neither registered nor exempt from registration pursuant to A.R.S.  
 21 § 44-1801, et. seq.

22 4. The Buckhorn Respondents and the Shook Respondents offered and/or sold  
 23 unregistered securities within or from Arizona in violation of A.R.S. § 44-1841.

24 5. The Buckhorn Respondents offered and/or sold securities within or from Arizona  
 25 without being registered as dealers or salesmen in violation of A.R.S. § 44-1842.

26 6. The Buckhorn Respondents and the Shook Respondents violated the anti-fraud  
 27 provisions of A.R.S. § 44-1991 in the matter set forth hereinabove and as described in Decision Nos.  
 28

1 61041 and 61081.

2 7. The Buckhorn Respondents and the Shook Respondents should be jointly and  
3 severally liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C R14-4-308 in an amount  
4 not to exceed \$8,885,361.64 subject to any legal set-offs.

5 8. Based on the evidence, the Buckhorn Respondents and the Shook Respondents should  
6 be assessed an administrative penalty of \$140,000 jointly and severally pursuant to A.R.S. § 44-2036  
7 for the multiple violations of the Act as described hereinabove and in Decision Nos. 61041 and  
8 61081.

9 **ORDER**

10 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission  
11 under A.R.S. § 44-2036, Respondents Buckhorn Financial Services, Inc. dba Buckhorn Financial  
12 Services of Arizona, Mr. Joseph K. Hilyard, Mr. Michael Lee Mathis, Mr. Steven L. Shook and Safe  
13 Keeping, Inc. dba Safe Keeping Depository, Inc. shall jointly and severally pay as an administrative  
14 penalty the sum of \$140,000 for the multiple violations of the Act described hereinabove, said  
15 administrative penalties to be paid within 60 days of the effective date of this Decision.

16 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be  
17 made payable to the State Treasurer for deposit in the General Fund for the State of Arizona.

18 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear  
19 interest at the rate of ten percent per year for any outstanding balance after 60 days from the effective  
20 date of this Decision.

21 IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against  
22 the above-named Respondents shall be reduced to \$90,000 if restitution is made within 60 days of the  
23 effective date of this Decision in accordance with the terms of this Decision hereinafter.

24 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
25 A.R.S. § 44-2032, Respondents Buckhorn Financial Services, Inc. dba Buckhorn Financial Services  
26 of Arizona, Mr. Joseph K. Hilyard, Mr. Michael Lee Mathis, Mr. Steven L. Shook and Safe Keeping,  
27 Inc. dba Safe Keeping Depository, Inc. jointly and severally shall make restitution in an amount not  
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to exceed \$8,885,361.64 which restitution shall be made pursuant to A.A.C. R14-4-308, subject to  
and legal set-offs by any other Respondents and confirmed by the Director of Securities, said  
restitution to be made within 60 days of the effective date of this Decision.

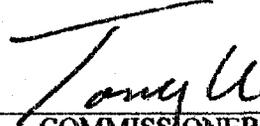
IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the  
rate of ten percent per year for the period from the dates of investment to the date of payment of  
restitution by the Respondents.

IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be  
deposited into an interest-bearing account (s), if appropriate, until distributions are made.

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

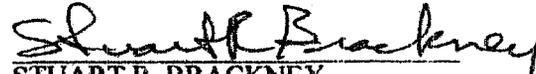
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
COMMISSIONER-CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY,  
Acting Executive Secretary 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 1 day of April 1999.

  
STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
MES:bbs

1 SERVICE LIST FOR:

BUCKHORN FINANCIAL SERVICES, INC. d/b/a  
BUCKHORN FINANCIAL SERVICE OF ARIZONA,  
JOSEPH K. HILYARD, MICHAEL LEE MATHIS,  
SAFE KEEPING, INC., d/b/a SAFE KEEPING  
DEPOSITORY, INC., STEVEN L. SHOOK

4 DOCKET NO.

S-03233A-98-0000

5  
6 BURTON M. BENTLEY, P.C.  
7 78<sup>th</sup> N. 16<sup>th</sup> Street, Suite 110  
8 Phoenix, Arizona 85020

9 Attorneys for Respondents Buckhorn Financial  
10 Services, Inc. dba Buckhorn Financial Service of  
11 Arizona, Joseph K. Hilyard and Michael Lee Mathis

12 Joseph K. Hilyard  
13 20423 Prince Creek  
14 Katy, TX 77450

15 Michael Lee Mathis  
16 3½ miles North San Benito on Watson Road  
17 San Benito, TX

18 John W. Blischak  
19 Attorney at Law  
20 1100 East Washington, Suite 200  
21 Phoenix, Arizona 85034-1045  
22 Attorneys for Safe Keeping Depository, Inc.,  
23 dba Safe Keeping, Inc.

24 Michael V. Black  
25 3550 N. Central Avenue, Suite 1010  
26 Phoenix, Arizona 85012  
27 Attorney for Steven L. Shook

28 Norma Martens  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
1275 West Washington Street  
Phoenix, Arizona 85007

W. Mark Sendrow, Director  
Securities Division  
ARIZONA CORPORATION COMMISSION  
1300 West Washington Street  
Phoenix, Arizona 85007