



0000116283

ORIGINAL

Memorandum

RECEIVED

DATE: December 28, 2000

TO: Nancy Cole
Docket Control

FROM: Pam Johnson *PJ*
Securities Division

RE: Charles Ray Stedman, et al.
Docket No. S-03353A-00-0000
Internal Routing Distribution

CC: Emie Bridges

2000 DEC 28 A 9:46
NEW
AZ CORP COMMISSION
DOCUMENT CONTROL

This is to notify you that the following individuals should be copied on all docketed items for the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert/ Amy Leeson

<u>Pam Johnson</u>	(Staff Attorney)
<u>Jerry Lowe</u>	(Staff Investigator)
<u>Gary Mengel</u>	(Staff Accountant)

Note: The Assistant Attorney General assigned to this matter is: Moira McCarthy.

Thank you for your cooperation in this matter.

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2000 DEC 28 A 9:47

NEW

AZ CORP COMMISSION
DOCUMENT CONTROL

CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

In the matter of

DOCKET NO. S-03353A-00-0000

CHARLES RAY STEDMAN
3001 East Frontage Road
Amado, AZ 85629

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
FOR RESTITUTION,
FOR ADMINISTRATIVE
PENALTIES, AND FOR OTHER
AFFIRMATIVE ACTION**

WENDELL T. DECKER, JR.
5249 N. Adobe Circle
Tucson, AZ 85750

OXFORD DEVELOPMENT, L.L.C.
5249 North Adobe Circle
Tucson, AZ 85750

PROFUTURA, L.L.C.
P.O. Box 4252
Tubac, AZ 85646

CNT FAMILY FUN OUTLETS, INC.
One East First Street
Reno, NV 89501

CHARLES W. TESTINO, JR.
3656 E. Windy Point Dr.
Tucson, AZ 85718
CRD#1216651

ARIZONA INVESTMENT ADVISORS, INC.
2920 North Swan Road, Suite 206
Tucson, AZ 85712

KEITH B. "SKIP" DAVIS
6550 North Silversmith Place
Tucson, AZ 85750

SPY GLASS ENTERPRISES L.L.C.
6550 North Silversmith Place
Tucson, AZ 85750

KEITH B. DAVIS, INC.
6550 North Silversmith Place
Tucson, AZ 85750,

Respondents.

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

1 The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")
2 alleges that respondents have engaged in acts, practices and transactions, which constitute violations of the
3 Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*, ("Securities Act").

4 **I.**

5 **JURISDICTION**

6 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
7 Constitution and the Securities Act.

8 **II.**

9 **RESPONDENTS**

10 2. CHARLES RAY STEDMAN ("STEDMAN") is an individual, whose last known address
11 is 3001 East Frontage Road, Amado, Arizona, 85629. STEDMAN was at all pertinent times managing
12 member of PROFUTURA, L.L.C. Beginning in or around 1995, STEDMAN signed, as "Maker",
13 promissory notes ("Notes") issued to private investors. In an unrelated matter, on January 21, 1994, the
14 National Association of Securities Dealers ("NASD") censured STEDMAN, barred STEDMAN from
15 associating with any NASD member in any capacity, and fined STEDMAN \$20,000, for conduct
16 "inconsistent with just and equitable principles of trade."

17 3. WENDELL T. DECKER, JR. ("DECKER") is an individual, whose last known address
18 is 5249 North Adobe Circle, Tucson, Arizona, 85750. DECKER was at all pertinent times a developer,
19 who planned an outlet mall development in or near Dacono, Colorado (the "Dacono Project"). DECKER
20 signed Notes issued to private investors, as managing member of OXFORD DEVELOPMENT, L.L.C.

21 4. OXFORD DEVELOPMENT, L.L.C. ("OXFORD") is an Arizona limited liability
22 company organized on March 24, 1993. Its principal place of business is 5249 North Adobe Circle,
23 Tucson, Arizona, 85750. At all pertinent times, OXFORD is the recorded owner of grassland property,
24 which was to be the site for an outlet mall (the "Dacono Project property"). The Dacono Project property
25 was represented as collateral for most of the Notes issued to investors. OXFORD is signatory to the
26 Notes, through its managing member DECKER.

1 5. PROFUTURA, L.L.C. ("PROFUTURA") is an Arizona limited liability company
2 organized on March 5, 1993. Its principal place of business is P.O. Box 4252, 190 Tubac Road, Suite
3 500, Tubac, Arizona, 85646. At all pertinent times, PROFUTURA is a member of OXFORD, and is
4 signatory to the Notes, through its managing member STEDMAN.

5 6. CNT FAMILY FUN OUTLETS, INC. ("CNT") is a Nevada corporation incorporated
6 on June 19, 1996. DECKER is its President and Director. STEDMAN is its Secretary/Treasurer and
7 Director. Its resident agent is located at One East First Street, Reno, Nevada, 89501. CNT is signatory
8 to the Notes, through its president DECKER.

9 7. CHARLES W. TESTINO, JR. ("TESTINO") is an individual, whose last known
10 address is 3656 E. Windy Point Dr., Tucson, Arizona, 85718. TESTINO was registered with the
11 Commission as a securities salesman in Arizona from November 5, 1993, until November 4, 1999. On
12 or about September 15, 1998, TESTINO's former dealer, SunAmerica Securities, Inc. ("SAS"),
13 terminated TESTINO upon allegations that: "Without SAS knowledge or approval, TESTINO facilitated
14 the lending of money via promissory notes from a number of individuals to a person who was
15 subsequently determined by the firm to be subject to an industry bar." Subsequently, TESTINO was
16 employed by Washington Square Securities, Inc. from December 1998 to November 4, 1999. On March
17 9, 2000, the NASD found that TESTINO had violated NASD Conduct Rules by engaging in private
18 securities transactions without prior written notice to his employer member firm, SAS, and sanctioned
19 TESTINO with a \$60,000 fine and a 60 day suspension. On October 3, 2000, the NASD upheld its prior
20 decision and increased its sanctions to a suspension of six months and a fine of \$177,000.

21 8. ARIZONA INVESTMENT ADVISORS, INC. ("AIA") is an Arizona corporation,
22 incorporated on August 30, 1998. Its principal place of business is 2920 North Swan Road, Suite 206,
23 Tucson, Arizona, 85712. TESTINO is at all pertinent times the president and owner of AIA.

24 9. TESTINO and AIA will be referred to collectively as "TESTINO."
25
26

1 project "alive" until the principals could secure funding. DECKER and STEDMAN authorized DAVIS
2 and TESTINO to use the Notes to raise additional funds from private investors, and agreed to pay
3 commissions of 10% of all money raised, and an additional equity interest in the project.

4 19. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as
5 "Maker" and be personally liable to investors; the borrowed funds would be transferred to PROFUTURA
6 to loan to OXFORD to cover costs necessary to obtain construction financing for the project; OXFORD
7 would pledge the Dacono Project property as security for the Notes and would pay STEDMAN's
8 obligations to investors, including the interest on the Notes; and DECKER would determine what
9 portions of the Dacono Project property would be used to secure the Notes.

10 20. From approximately January 1995 through December 1999, RESPONDENTS issued,
11 offered, sold, or participated in the sale of approximately 124 Notes to approximately 110 private
12 investors, raising over \$5,000,000 from private investors.

13 21. Investors were told that their funds were to be used to develop a project described as the
14 Dacono Factory Outlet Stores or the Dacono Factory Outlet Mall and Sports Arena, and that their Notes
15 would be paid upon the due date or at the close of the construction financing.

16 22. Up until around April 1999, Notes sold to private investors were titled "PROMISSORY
17 NOTE SECURED BY DEED OF TRUST," and stated that the Notes and any renewal or extension of
18 the Notes were secured by a percent undivided interest in a deed of trust on the Dacono Project property
19 owned by OXFORD. In fact, from the inception of the project to date, less than ten private investors are
20 beneficiaries of any recorded interests in the Dacono Project property.

21 23. As part of the paperwork for the Notes, investors were required to sign form letters
22 addressed to STEDMAN, which the promoters called "Big Boy Letters." The letters stated that the
23 investors were accredited investors, defined as investors whose net worth was over \$1,000,000, or whose
24 income was at least \$200,000 for the two years prior to investment.

25 24. The interest rates on most of the Notes varied from 12% to 20% per annum. From 1995
26 through around September 1997, the term of the Notes was one year. After the project failed to obtain

1 construction financing, in or around September 1997, the term of most of the Notes was reduced to 90
2 days, and existing Notes, including interest, were rolled over or renewed at the end of their terms.

3 25. DECKER offered DAVIS 10% commissions, and TESTINO was to be paid 5%
4 commissions, on rollovers, for their efforts to keep investors satisfied that there weren't problems with
5 the project. By August 2000, some of the Notes had been rolled over eighteen times.

6 26. In December 1998, one investor protested that the deed of trust that was supposed to
7 secure his Note was never recorded. Within approximately three months, in or around April 1999,
8 RESPONDENTS started to offer and sell "unsecured" Notes to new private investors.

9 27. According to Oxford's accounting records, the total principal amount due on outstanding
10 Notes issued to private investors was approximately \$5,017,000 on or about May 31, 2000. At that time,
11 the total due including interest on those notes was approximately \$22,166,000.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

14 **(Offer or Sale of Unregistered Securities)**

15 28. From in or around 1995, RESPONDENTS offered and sold securities in the form of
16 notes, evidences of indebtedness, and/or investment contracts, within or from Arizona.

17 29. The securities referred to above were not registered pursuant to the provisions of Articles
18 6 or 7 of the Securities Act.

19 30. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 31. RESPONDENTS, except for TESTINO, offered or sold securities within or from Arizona
24 while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

25 32. This conduct violates A.R.S. § 44-1842.

26 ...

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

33. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

- a) Misrepresenting that the investment was a short-term loan because a construction loan for the Dacono Project was in place and investors would be paid in full at the close of that loan, when in fact there were a series of purported loan "commitments" that never materialized and the principals never succeeded in negotiating construction financing for the project;
- b) Misrepresenting until at least April 1999 that the Notes, and any extensions, renewals or rollovers of the Notes, were secured by a recorded interest in a deed of trust on a portion of the Dacono Project property located in Weld County, Colorado and owned by OXFORD; and misrepresenting that the total of all loans secured by Lot 6 would not exceed one million dollars. In fact only approximately eight of the original investors in 1996 and early 1997 were identified as beneficiaries on recorded deeds of trust, the total of all loans misrepresented as secured by Lot 6 far exceeded one million dollars, and the property that was supposed to be pledged to private investors was utilized instead as security to obtain financing from institutional "bridge" lenders;

- 1 c) Representing that investor funds were to be used to develop the Dacono Project,
2 when in fact, investor funds were used primarily for attorney fees and loan fees for
3 failed funding attempts, attempts to obtain tax benefits for the future owners of the
4 project, redeeming prior investors' defaulted Notes, interest payments to early
5 investors with secured loans, profits to bridge lenders, DECKER's living
6 expenses, and DECKER's and STEDMAN's travel expenses;
- 7 d) Failing to disclose the risks involved with this development project, specifically,
8 the uncertainty of getting construction financing, the repeated failed attempts to
9 obtain construction financing and bond funding, the costs of attempts to obtain
10 financing, and STEDMAN's inability to repay the Notes, if construction financing
11 was not secured;
- 12 e) Failing to disclose to new investors that earlier investors were forced to accept
13 rollover Notes because STEDMAN and OXFORD could not pay the Notes
14 when due, the total debt owed to prior investors including interest on defaulted
15 Notes, and the commissions owed to DAVIS and TESTINO resulting from
16 rollovers;
- 17 f) Failing to disclose the background and financial condition of the principals and
18 the project, including but not limited to the following:
- 19 (1) That DECKER had previously filed bankruptcy in 1989, and, as a result,
20 private investors in prior factory outlet mall projects had lost their
21 investments;
- 22 (2) That on January 21, 1994, the NASD censured STEDMAN, barred
23 STEDMAN from associating with any NASD member in any capacity,
24 and fined STEDMAN \$20,000, for conduct "inconsistent with just and
25 equitable principles of trade," because STEDMAN had failed to timely
26 and fully respond to a request for information from the NASD concerning

1 a complaint alleging that he had misappropriated \$175,000 from the
2 customer's account; and

3 (3) That TESTINO was terminated on September 15, 1998, by his former
4 dealer, SunAmerica Securities, Inc. ("SAS"), upon allegations relating to
5 his sale of these Notes, specifically, that "Without SAS knowledge or
6 approval, Testino facilitated the lending of money via promissory notes
7 from a number of individuals to a person who was subsequently
8 determined by the firm to be subject to an industry bar;" and that
9 TESTINO was under investigation by the NASD for violations of NASD
10 Rules as a result of his unauthorized activity;

11 g) Failing to disclose that the Notes were securities, that RESPONDENTS were
12 selling the Notes to investors who were not accredited investors, and that the
13 Notes were not exempt from securities registration requirements and not
14 registered.

15 34. This conduct violates A.R.S. § 44-1991.

16 35. As a separate and additional basis for liability under A.R.S. § 44-1991, all
17 RESPONDENTS made, participated in or induced the sale or purchase of a security within the meaning
18 of A.R.S. § 44-2003(A). Therefore, they are liable for the above violations of A.R.S. § 44-1991.

19 36. As an additional separate and additional basis for liability under A.R.S. § 44-1991,
20 during the above violations of A.R.S. § 44-1991, DECKER directly or indirectly controlled OXFORD
21 within the meaning of A.R.S. § 44-1999. Therefore, DECKER is liable to the same extent as
22 OXFORD for its violations of A.R.S. § 44-1991.

23 **VIII.**

24 **REQUESTED RELIEF**

25 The Division requests that the Commission grant the following relief against
26 RESPONDENTS:

1 an accommodation, contact Shelly M. Hood, ADA Coordinator, voice phone number 602/542-3931, e-
2 mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
3 accommodation.

4 Dated this 28th day of December, 2000.

5 

6 _____
7 Mark Sendrow
8 Director of Securities

9 N:\ENFORCE\CASES\TESTINO.P\PLEADING\FINAL NOTICE.doc
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26