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ORIGINAL <sup>12</sup> EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCUMENT CONTROL

1 WILLIAM A. MUNDELL  
2 Chairman  
3 JIM IRVIN  
4 Commissioner  
5 MARC SPITZER  
6 Commissioner

7 In the matter of )  
8 CHARLES RAY STEDMAN )  
9 3001 East Frontage Road )  
10 Amado, AZ 85629 )  
11 WENDELL T. DECKER, JR. )  
12 5249 N. Adobe Circle )  
13 Tucson, AZ 85750 )  
14 OXFORD DEVELOPMENT, L.L.C. )  
15 5249 North Adobe Circle )  
16 Tucson, AZ 85750 )  
17 PROFUTURA, L.L.C. )  
18 P.O. Box 4252 )  
19 Tubac, AZ 85646 )  
20 CNT FAMILY FUN OUTLETS, INC. )  
21 One East First Street )  
22 Reno, NV 89501 )  
23 CHARLES W. TESTINO, JR. )  
24 3656 E. Windy Point Dr. )  
25 Tucson, AZ 85718 )  
26 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.

DOCKET NO. S-03353A-00-0000

**EXCEPTIONS TO HEARING  
OFFICER'S RECOMMENDED  
OPINION AND ORDER**

Arizona Corporation Commission  
**DOCKETED**

DEC 07 2001

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21 The Securities Division ("Division") of the Arizona Corporation Commission hereby submits its  
22 exceptions and attached proposed amendments to the Recommended Opinion and Order of the Hearing  
23 Officer filed on November 9, 2000.

24 The Division agrees with the Hearing Officer's recommendations and urges the Commissioners  
25 to adopt the Recommended Opinion and Order with the amendments discussed below and listed on  
26 Exhibit "A" attached hereto.

## I.

## DISCUSSION

CHARLES RAY STEDMAN ("Stedman") personally issued more than 124 promissory notes, as "Maker," to more than 110 private investors. Stedman authorized Respondents Keith B. Davis and Charles W. Testino, Jr. to use the notes he signed to solicit investors.<sup>1</sup> Investors were told that their money would be used to develop property located in Dacono, Colorado, in a project known as the Dacono Factory Outlet Mall. The property was owned by Oxford Development, LLC ("Oxford"). Stedman was managing member of PROFUTURA, LLC ("Profutura"), which was a member of Oxford. Oxford's managing member was developer Wendell T. Decker, Jr. ("Decker").

**A. Intent is not a necessary element for a violation of A.R.S. § 44-1991(2).**

The administrative law judge found that Stedman's and Profutura's conduct violated A.R.S. § 44-1991(2), which prohibits making misrepresentations and omissions, directly or indirectly, in connection with the offer or sale of securities. The administrative law judge correctly stated that the elements of the claims asserted against Stedman and Profutura do not require a showing of scienter. (See Recommended Opinion and Order at page 8, lines 1-4.) Therefore, the Division was not required to show evidence of intent or bad faith on the part of Mr. Stedman. Although state of mind is a relevant issue in criminal proceedings, it was not an issue in this administrative case involving securities fraud.

For these reasons, the Division requests the following amendments to the Recommended Opinion and Order:

- Delete the words "they had believed to be imminent" at page 5, line 16;
- Delete the words "and believed," in the Findings of Fact at page 10, paragraph 21, line 27;
- Delete the word "believed" and insert the word "represented" in the Findings of Fact at page 11, line 16.

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<sup>1</sup> See Reporter's Transcript of Proceedings, filed on July 6, 2001, excerpts attached hereto, at pages 222-224 (Testino testimony) and 234-236 (Davis testimony).

1 Findings relating to Stedman's alleged innocent "beliefs" are neither necessary nor appropriate  
2 because Stedman's intent is not a necessary element for a violation of A.R.S. § 44-1991(2). Further, as  
3 stated in more detail below, such findings are not supported by the evidence.

4 **B. The evidence does not support any finding of innocent belief by Stedman.**

5  
6 There was considerable evidence that Stedman knew or should have known that financing was  
7 not imminent when he issued short-term notes to raise hundreds of thousands of dollars from  
8 uninformed private investors from 1997 through 1999.<sup>2</sup> After numerous failures to obtain construction  
9 financing for the project, Stedman continued to tell investors, directly and indirectly, that financing  
10 would be in place within a short period of time, and failed to disclose the prior failures to obtain  
11 financing. The administrative law judge made findings accordingly. *See Recommended Opinion and*  
12 *Order at Findings of Fact, pages 11-12, paragraphs 23(a), (c), (d) and (e).* Every time he signed a short-  
13 term note, Stedman was making misrepresentations and omissions to investors who were putting money  
14 into the project based upon beliefs that their investments would be short-term. There is substantial  
15 evidence in the record that Stedman did not believe, and that he had no reasonable basis to believe, that  
16 he could pay the notes within their short term, even as he continued to sign new short-term notes.

17  
18 Mr. Stedman did not personally appear or testify at the hearing, so there was no opportunity for  
19 the administrative law judge to determine the credibility of his alleged beliefs. However, Stedman's  
20 own testimony before the Securities Division, taken on September 16, 1999, and August 10, 2000,  
21 (admitted into evidence as Hearing Exhibits S-12a and S-12b), shows that he was personally involved  
22 and knew the true status of the project and the recurring problems, which he did not disclose to  
23 investors. Stedman discussed the failed attempts to obtain construction financing and the huge  
24 compounding interest that was accumulating on the existing notes, which he rolled over and over even

25  
26 <sup>2</sup> Gayle Lynn Bonner, a teacher for 33 years, testified that she first invested \$60,000 of her retirement savings, in a check made out to Charles Stedman, in October 1999. *See Reporter's Transcript of Proceedings, at pages 61-62, 75-77, 79-80, attached hereto, referencing Hearing Exhibit S-25.*

1 as he continued to sign new notes for new investors. And he admitted his personal obligation on the  
2 notes and his own inability to pay them without construction financing.

3 Q. [BY JOHNSON] What efforts have been made to obtain financing up to this point?

4 A. [BY STEDMAN] We have, I couldn't count the number of people we have talked  
5 to. We have filled out applications, paid lending fees, received commitment letters from  
6 Colorado to California to New York.

7 Q. And they've all fallen through?

8 A. They've all fallen through except for our current one we're working on.

9 (Hearing Exhibit S-12b at page 206, lines 1-10.)

10 Q. ... What is the current amount of money outstanding on the notes? The  
11 obligation?

12 A. I can only give you an approximate figure. I have – and the approximate figure I  
13 have is \$15 million.

14 Q. Okay. And you're personally obligated on all of that?

15 A. Yes.

16 (Hearing Exhibit S-12a at page 43, lines 2-9.)

17 Stedman, who first became involved in the project in 1993, admitted that he knew as early as  
18 1995 or 1996 that the project was not proceeding with financing as he had anticipated:

19 Q. So my question is what has happened that has prevented you from realizing this  
20 dream that you had?

21 A. Two things, three things. Time. It's taken much longer than I ever anticipated.

22 Q. To do what?

23 A. To develop the project. We haven't, the construction hasn't even started yet.  
24 When I got involved, I expected it maybe to have the construction for the first phase done  
25 in 24 months.

26 Q. And why hasn't that happened?

A. Many delays, number one, I guess financing, inability to get together the financing.  
Sometimes that had to do with fallout of tenants, that had to do with a development of  
another factory outlet center in Loveland, Colorado which is just 25 miles to the north  
that started after we did and got completed sooner. All of these factors.

Q. Anything else?

A. . . . The other thing is we paid a lot of money for fees, for commitments to get  
financing, and have actually I think just been robbed, but what do we do?

Q. And why do you believe you haven't been able to get the financing that you  
expended all those fees for?

A. Early on, I think there was a fallout from the tenant, the tenants we had lined up  
initially, and then when this other shopping center came in, I think that hurt us.

Q. When did that happen? When did the tenants start falling out?

A. Oh, I would, it seems to me that must have been around, maybe sometime around  
'96 or so when we had to kind of redo that. Also one, at early on, there was a developer  
who has developed many shopping centers who was going to be part of the concept, and

1 then he reneged, and that was probably the earliest, earliest problem, crisis we had to  
2 face.

3 Q. When did that happen?

4 A. About the same time that we had the fallout of some of the tenants because he was  
5 responsible for bringing some of the early tenants.

6 Q. And that happened what, early '96?

7 A. That would be my guess, thereabouts. It could have been '95, it could have been  
8 '97.

9 Q. But it was after you got involved?

10 A. It was after I got involved.

11 (Hearing Exhibit S-12b at page 224, line 11 to page 227, line 6).

12 Although investors were solicited on the representation that construction financing was  
13 imminent, Stedman admitted that he was aware that there was a risk that the project would not be  
14 constructed, and that without construction, he could not pay the notes: "We had a lot of – we had much  
15 greater profit margin for covering the indebtedness than a normal project would have. But the risk was  
16 getting it done. And that without it, without the construction of the project, I don't have the funds to  
17 pay." (Hearing Exhibit S-12a at page 139, line 22 to page 140, line 2 (emphasis added).) Stedman  
18 further admitted that he did not disclose these risks to investors:

19 Q. Okay. And when you say the risk was getting it done, what were the specific risks  
20 involved in getting it done?

21 A. Obtaining the necessary financing. . . .

22 Q. And what else?

23 A. I don't –

24 Q. Illiquidity. Would that be a risk?

25 A. Probably.

26 (Hearing Exhibit S-12a at page 140, line 3 to line 12.)

Q. Now, is one of those risks related to the time period, as you said, that it might take  
to actually see this thing through?

A. I'm not sure.

Q. The fact that you're putting your money into a project that you're not going to be  
able to get it out within 45 days or 90 days of your loan, was that risk discussed?

A. Probably not.

(Hearing Exhibit S-12a at page 141, line 4 to page 142, line 1).

1 The recommended order correctly states that Stedman admitted that he did not disclose risks of  
2 the investment to the private investors. (See recommended order at page 7, lines 8-11.) Stedman  
3 admitted failing to disclose the risk that if the project was not constructed, the investors could lose their  
4 investments:

5 Q. (BY MS. JOHNSON) Are you aware of any disclosure being given to private  
6 lenders concerning risks of losing their investment?

7 A. I'm not aware of any.

8 (Hearing Exhibit S-12a at page 145, lines 15-18.)

9 Stedman offered several factors motivating him to continue to solicit new investors with notes  
10 purporting to be "short-term," quite apart from any *continuing belief* that the construction financing  
11 would be in place within a short period of time. These motives included his desire to protect his earliest  
12 investors who were his personal friends, his own anticipation of profiting from the completion of the  
13 project, and his fear that if he stopped issuing new short-term notes he might "crash the project:"

14 Q. At what stage did the concept of the promissory notes come to the fore?

15 A. Well, initially it was to be used just with a few people and my friends. And then  
16 Ted got connected with this Arizona Lending, and then it went on from there. It just sort  
of evolved.

17 (Hearing Exhibit S-12a at page 81, line 22 to page 82, line 2.)

18 Q. How did it happen that you took on the responsibility of personally signing each  
of these notes?

19 A. It got to a situation where I felt that I had no other option. That in order for the  
20 project to be successful, we had to have the funds. In order to get the funds, I had to sign  
the notes. And if I didn't sign the notes, we didn't have the funds, we couldn't have the  
project. And if we didn't have the project, how were we going to pay anybody off?

21 Q. You mentioned that operating agreement that you have with Mr. Decker. When  
did you first enter into that agreement? . . .

22 A. I think it was '94. I believe that's when I became involved.

23 Q. As part of that agreement did you become obligated to provide funding or to see  
that funding was provided?

24 A. Well, I think it was only as I was capable of. But at a certain point I felt obligated  
to the people who I had already brought in, so I felt that's how I could protect them.

25 (Hearing Exhibit S-12a at page 85, line 19 to page 86, line 17.)

26

1 A. Most projects, before I got involved with this, any project I was involved with did  
 2 not have the benefit from tax incentives, from the sales tax. And compared with the little  
 3 shopping center that I built down in Tubac, we didn't have anything. This project  
 4 allowed for a percentage of the sales revenues generated in the project to be rebated to the  
 5 tax district that could be used to reimburse the developer for some of the development  
 6 costs, substantial development costs, and certain ongoing maintenance costs, including  
 7 incentive fees for signing up tenants. And that's a substantial return to the developer.  
 8 Also the sales tax is generated from sales transactions, so assuming that the sales  
 9 transactions increase in volume, the tax benefit would increase in volume as time went  
 10 on. . . .

11 Q. So you're talking about a potential income to the developer over a long period of  
 12 time into the future?

13 A. 20 years.

14 Q. Okay. And at the time you got involved in this project, your expectation was that  
 15 you would be one of those owners?

16 A. Yes. Yes.

17 Q. So certainly that was an incentive for you to put all this time and effort into this  
 18 project.

19 A. Yes.

20 (Hearing Exhibit S-12b at page 222, line 18 to page 224, line 5.)

21 A. [M]y whole focus has been trying to get this project completed, and I felt like I've  
 22 been at ransom or at hostage on these notes and rollovers, that I had to do whatever they  
 23 wanted me to do rather than to crash the project.

24 Q. And who was holding you hostage on this?

25 A. Every lender involved in the project.

26 (Hearing Exhibit S-12b at page 255, lines 19-25.)

Indeed, Stedman may argue that he acted out of desperation to protect his early investors, who  
 were his own family and friends, or to protect himself, all the while hoping upon hope that the project  
 would be successful and that construction funding would come through. However, to state as a finding  
 of fact that he *believed* as much goes well beyond the weight of the evidence.

**C. The restitution amount should be increased to include additional investors who testified  
 at hearing.**

Prior to the hearing, Oxford and Decker entered into a consent Order, which was approved by  
 the Commission on June 6, 2001, in Decision No. 63718. The Commission ordered Oxford and  
 Decker to pay restitution in the amount of \$5,286,160, plus interest at the rate of 10 percent per annum  
 from the date of each investment until paid in full, to be reduced by any distribution payments made to  
 date. This restitution amount was based upon Oxford's accounting records, which listed the promissory

1 note investors and the amounts of their investments. (Hearing Exhibits S-16a, S-19a and S-19b.) To  
2 date, the project has failed to obtain construction financing, and the restitution has not been paid.

3 At hearing, the Division offered evidence relating to three investors who were not reflected in  
4 Oxford's records. These three investors, Mr. and Mrs. Jan and Nancy Prins and the Estate of Ethel  
5 Gross, had direct dealings only with Stedman and Profutura. Jan Prins testified that he invested money  
6 in Stedman's projects, including the Dacono project, after Stedman was introduced to him as a financial  
7 planner in 1993. (Reporter's Transcript of Proceedings, filed on July 6, 2001, at pages 96-98, 103,  
8 attached hereto.) Stedman issued notes to the Prins's in December 1995, for \$54,880 and for \$47,000,  
9 reflecting money they had invested directly into the Dacono project. (Reporter's Transcript at pages  
10 108-109, attached hereto, and Hearing Exhibit S-26.) From November 1995 through June 1996,  
11 Stedman issued a series of promissory notes to the Ethel E. Gross Revocable Living Trust, reflecting  
12 funds in the amount of \$777,310 that he transferred from the Estate of Ethel Gross when it was under  
13 his control, apparently without the authorization of the remainder beneficiary of the trust. (Reporter's  
14 Transcript of Proceedings, at pages 139-146, attached hereto, and Hearing Exhibit S-28.)

15 Consistent with the evidence offered at hearing, the Division requests the following amendment  
16 to the restitution ordered against Stedman and Profutura to reflect an increase of \$880,190, the total  
17 invested in Stedman's notes by Jan and Nancy Prins and the Ethel E. Gross Revocable Living Trust:

- 18 • Delete "\$5,285,160<sup>3</sup> and insert "\$6,165,350."

19 **D. Minor corrections and clarifications.**

20 In addition, the Division requests the following minor corrections and clarifications.

21 In paragraph 23(a), at page 11, line 13 of the Findings of Fact, for purposes of clarification:

- 22 • Delete the word "that" and insert the words "a construction loan." This proposed  
23 revised language is consistent with the Findings of Fact at page 9, paragraph 10, lines  
24

25  
26 <sup>2</sup> There appears to be a typographical error in the \$5,285,160 figure, because at page 10, paragraph 15 of the recommended order the investment figure is \$5,286,160, which is the same amount ordered against Decker and Oxford in their consent Order.

1 13-16, which references a construction loan. The same change is requested at page 5,  
2 line 13 of the Discussion.

3 In paragraph 23(a), at page 11, lines 15-16 of the Findings of Fact, for purposes of clarification:

- 4 • Delete the word "that" and the comma preceding it. The same change is requested at  
5 page 5, line 15, of the Discussion.

6 At the Discussion on page 7, line 27, for purposes of clarification:

- 7 • Delete the word "of" and insert the word "for."

8 At the Conclusions of Law on page 13, line 9:

- 9 • Delete "(23)" and insert "(26)," to correct an apparent typographical error.

10 **II.**

11 **CONCLUSION**

12 Intent is not a necessary element for a violation of A.R.S. § 44-1991(2). Therefore, it is  
13 inappropriate to make findings regarding Stedman's beliefs. Moreover, such findings are not supported  
14 by the evidence.

15 The restitution amount should be increased to include the investments of three additional  
16 investors, consistent with the testimony and evidence presented at the hearing.

17 For the above reasons, the Division hereby requests the Commission to modify the  
18 Recommended Opinion and Order by adopting and incorporating therein the proposed amendments  
19 specified in attached Exhibit A.

20 RESPECTFULLY submitted this 7<sup>th</sup> day of December, 2001.

21 By:   
22 PAMELA T. JOHNSON  
23 Special Assistant Attorney General  
24 MOIRA McCARTHY  
25 Assistant Attorney General  
26 Attorneys for the Securities  
Division of the Arizona  
Corporation Commission

1 Original and ten copies filed with the  
2 Docket Control this 7th day of December, 2001:

3 Arizona Corporation Commission  
4 1200 West Washington  
5 Phoenix, AZ 85007

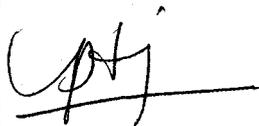
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26 

<b>THIS AMENDMENT:</b>			
_____ Passed	_____ Passed as amended by _____		
_____ Failed	_____ Not Offered	_____ Withdrawn	

**SECURITIES DIVISION PROPOSED AMENDMENT # 1**

TIME/DATE PREPARED: November 19, 2001

MATTER: CHARLES RAY STEDMAN, ET AL.                      AGENDA ITEM NO. S-

DOCKET NO: S-03353A-00-0000                      OPEN MEETING DATE December 18-19, 2001

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Page 5, line 13, after "at the close of":

**DELETE:** "that"

**INSERT:** "a construction"

Page 5, line 15:

**DELETE:** ", that"

Page 5, line 16:

**DELETE:** "they had believed to be imminent"

Page 7, line 27:

**DELETE:** "of"

**INSERT:** "for"

Page 8, line 9:

**DELETE:** "\$5,286,160"

**INSERT:** "\$6,165,350"

Page 10, line 27:

**DELETE:** "and believed,"

Page 10, line 28, after "investors":

**DELETE:** comma

Page 11, line 13, after "at the close of":

**DELETE:** "that"

**INSERT:** "a construction"

Page 11, line 15:

**DELETE:** ", that"

Page 11, line 16:

**DELETE:** "believed"

**INSERT:** "represented"

Page 13, line 9:

**DELETE:** "(23)"

**INSERT:** "(26)"

Page 14, line 4:

**DELETE:** "\$5,285,160"

**INSERT:** "\$6,165,350"

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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF:

) DOCKET NO.  
) S-03353A-00-0000

) CHARLES RAY STEDMAN  
) 3001 East Frontage Road  
) Amado, Arizona 85629,  
)

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) 5249 North Adobe Circle  
) Tucson, Arizona 85750,  
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)

1 KEITH B. DAVIS, INC. )  
 6550 North Silversmith Place )  
 2 Tucson, Arizona 85750, )  
 )  
 3 Respondents. )  
 )

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4 At: Tucson, Arizona  
 5 Date: June 25, 2001  
 6 Filed: JUL -6 2001  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

ARIZONA REPORTING SERVICE, INC.  
 Court Reporting  
 Suite Three  
 2627 North Third Street  
 Phoenix, Arizona 85004-1103

Prepared for: By: CAROLYN T. SULLIVAN, RPR  
 CCR No. 50528

ACC

**ORIGINAL**

1                                   GAYLE LYNN BONNER,  
2   called as a witness on behalf of Securities Division,  
3   having been first duly sworn by the Certified Court  
4   Reporter, was examined and testified as follows:

5

6

DIRECT EXAMINATION

7

8           Q.    (BY MS. McCARTHY) Good morning, Ms. Bonner.  
9   How are you?

10          A.    Good. Maybe not so good.

11          Q.    Will you state your full name and spell your  
12   last name for the record.

13          A.    Gayle, G-a-y-l-e, Lynn, L-y-n-n, Bonner,  
14   B-o-n-n-e-r.

15          Q.    Ms. Bonner, what is your occupation?

16          A.    I just retired from Pima Community College as  
17   an instructor, and I'm also a counselor in my own  
18   private practice.

19          Q.    And how long have you been a counselor?

20          A.    20 years.

21          Q.    And I assume you're a Tucson resident?

22          A.    I am.

23          Q.    Also for 20 years?

24          A.    30.

25          Q.    Now, Ms. Bonner, did you have an occasion to

1 invest in the Dacono Factory Outlet Mall and Sports  
2 Arena?

3 A. Yes.

4 Q. And do you know an individual by the name of  
5 Charles Testino?

6 A. Yes.

7 Q. And how did you happen to meet Mr. Testino?

8 A. Through my mother, who had recommended him  
9 from another person who had invested with Chuck. And  
10 so that was my first contact with him.

11 Q. And when was that?

12 A. About -- it will be coming on two years, a  
13 year and a half, two years ago.

14 Q. So back in 1999?

15 A. Yes.

16 Q. Now, prior to your investment in the Dacono  
17 Factory Outlet Mall, had you had prior investments  
18 with Mr. Testino?

19 A. No.

20 Q. Now, this investment in the Dacono Factory  
21 Outlet Mall, do you recall when that was?

22 A. October of '99.

23 Q. And, Ms. Bonner, how much money did you  
24 invest?

25 A. \$60,000.

1 be used to redeem prior investors' defaulted notes?

2 A. Absolutely not.

3 Q. Did they tell you that the monies would be  
4 paid -- your monies would be used to pay interest  
5 payments to early investors?

6 A. No, sir, absolutely not.

7 Q. Would those pieces of information have  
8 influenced your decision to invest?

9 A. Yes.

10 Q. Would it have caused you not to want to  
11 invest in this property project?

12 A. I would not have invested if I had known  
13 that.

14 Q. Now, how did you think you would be repaid?

15 A. The information given to me was that a check  
16 would be coming in the mail next week and then the  
17 next week and then the next week. But I never  
18 received a check in the mail.

19 Q. And I believe earlier you had indicated that  
20 you believed you would be paid within 90 days.

21 A. Yes, ma'am.

22 Q. And were you, in fact, paid?

23 A. No.

24 Q. And have you received any monies back?

25 A. None.

1 Q. Now, Ms. Bonner, were you aware that  
2 Mr. Decker had filed bankruptcy in 1989?

3 A. No.

4 Q. Had you known that Mr. Decker had filed  
5 bankruptcy in 1989, would that have influenced your  
6 decision to invest?

7 A. Absolutely.

8 Q. Would you have invested?

9 A. No.

10 Q. Do you know a person by the name of Charles  
11 Stedman?

12 A. No.

13 Q. Mr. Stedman -- if you had known that  
14 Mr. Stedman had been barred by the National  
15 Association of Securities Dealers from selling  
16 securities in 1994, would you have invested in this  
17 project?

18 A. No.

19 Q. Have you since come to learn who Mr. Stedman  
20 is?

21 A. Yes.

22 Q. Now, Ms. Bonner, had you been aware that the  
23 prior investors had not been paid, would you have  
24 still invested?

25 A. No.

1 Q. Had you ever made a prior stock investment?

2 A. No. TSA, but that's not considered stock.

3 That's an educational savings.

4 Q. Have you ever had a prior investment  
5 involving a promissory note?

6 A. No.

7 Q. Will you describe for the hearing officer  
8 what effect this investment has had on your lifestyle.

9 A. It's been very devastating because this money  
10 that I had gotten from the business was to be a good  
11 portion of monies put into savings to have as I got  
12 older and that it would make money so that I would be  
13 comfortable in old age and retirement. And the monies  
14 that I didn't save over the years were used for the  
15 children to give them their education. They're both  
16 very educated and on their way, and I'm now left  
17 behind with a huge amount of money that I no longer  
18 have and will not be able to do the things that I had  
19 planned to do.

20 Q. Now, Ms. Bonner, are you having to postpone  
21 your retirement from your counseling position?

22 A. I plan to stay counseling even after I've  
23 retired from Pima College, but I certainly didn't want  
24 to work as much as I'm going to have to. So instead  
25 of half time at counseling, I'm going to have to work

1 pulling out the documents regarding Rosemary Erdmann.

2 MR. HEURLIN: I already said I did not object  
3 to that.

4 AACALJ RODDA: So S-25 or the portion of S-25  
5 related to this witness is admitted.

6 MS. MCCARTHY: And, Your Honor, I just have  
7 one more.

8 Q. (BY MS. MCCARTHY) Ms. Bonner, that packet  
9 that you have in front of you, the S-25, everything  
10 pertaining to you, in looking through there, do you  
11 see a copy of a check?

12 A. Yes.

13 Q. I believe it's a photocopy, two pages.

14 A. Yes.

15 Q. Do you recognize that?

16 A. Yes.

17 Q. What is that?

18 A. It is a check that I signed to Charles. Made  
19 it out to Charles Stedman.

20 Q. And at the time that you made the check out,  
21 did you understand who Charles Stedman was?

22 A. He was a part of the business deal, but I did  
23 not know him. I did not know his --

24 Q. Who instructed you to make the check out to  
25 Mr. Stedman?

1 A. Chuck Testino.

2 Q. And that's the only check that -- the only  
3 check that you gave to Mr. Testino in the amount of  
4 \$60,000?

5 A. Yes.

6 MS. McCARTHY: With that, Your Honor, I pass  
7 this witness to Mr. Heurlin.

8 AACALJ RODDA: Mr. Heurlin.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. HEURLIN) Ms. Bonner, what is your  
13 Bachelor's degree in?

14 A. I have a Bachelor's degree in speech  
15 communications.

16 Q. Do you have any postgraduate degrees?

17 A. Yes. I have a Master's in speech  
18 communications, and I have a Master's in counseling  
19 guidance.

20 Q. So you have two Master's degrees?

21 A. I have two Master's.

22 Q. And how long have you been teaching?

23 A. 33 years.

24 Q. Other than at Pima College, have you taught  
25 elsewhere?

1 Mr. Jan Prins, P-r-i-n-s.

2

3

JAN PRINS,

4 called as a witness on behalf of Securities Division,  
5 having been first duly sworn by the Certified Court  
6 Reporter, was examined and testified as follows:

7

8

DIRECT EXAMINATION

9

10 Q. (BY MS. JOHNSON) Hello, Mr. Prins. My  
11 name's Pam Johnson. I'm counsel for the Securities  
12 Division. We've met.

13 I'd like to ask you, would you tell us a  
14 little bit about yourself. Where are you from?

15 A. I'm originally from New York. I was born in  
16 New York. I presently live in Florida. My wife and I  
17 are retired school teachers. We retired in 1994.  
18 Prior to that, for the previous 12 years, we had  
19 taught in Germany. We were teaching the children of  
20 the American GIs who were based in Germany.

21 Q. And how did you -- do you know someone named  
22 Charles Stedman?

23 A. Yes.

24 Q. How did you first meet Mr. Stedman and when?

25 A. Well, I first met Mr. Stedman it would have

1 been in 1992 or 1993. I met him at a social  
2 gathering. He was a house guest of an American  
3 teacher that I taught with. And we were at a house  
4 party or dinner party. I don't remember the exact  
5 meeting because I had the opportunity at several  
6 different times to be at social gatherings with him.

7 Q. And how was Mr. Stedman introduced to you?

8 A. Mr. Stedman was introduced to me as a  
9 successful Arizona businessman, a certified financial  
10 planner. In fact, I think he was introduced as one of  
11 the first ten certified financial planners in the  
12 state of Arizona. And that was basically it. And  
13 that he was just in Germany for a short time and that  
14 he was a business partner with a Mr. Paul Houk.

15 In Germany, Mr. Houk ran the Fortune  
16 Insurance agency, which was an agency that -- I would  
17 say most of his business was to supply GIs with  
18 automobile insurance so that they could legally drive  
19 in the country of Germany. Apparently, Mr. Stedman  
20 had owned that business previously, and eventually he  
21 had worked out some kind of a partnership with  
22 Mr. Houk when Mr. Stedman went back to the States,  
23 which I don't know the dates on that.

24 Q. Okay.

25 Did it come to pass that you discussed

1 investments with Mr. Stedman?

2 A. Yes, it came to pass that we discussed  
3 investments. Several types of investments over  
4 different time periods. The first occasion was we  
5 were anticipating retirement. We were going to retire  
6 in Florida, my wife and I. We had a small  
7 manufactured home that we would rent out during the  
8 season to tourists. Of course, that would be taken  
9 care of by -- someone else would manage all of that  
10 for us while we were doing our teaching job. And when  
11 we retired to Florida, I wanted to upgrade our  
12 living -- our retirement home.

13 And so we talked about things like tax --  
14 what do they call it. Exchanges. Where if you have a  
15 business property, the government apparently has laws  
16 and rules that if you exchange one business property  
17 for a like business property, you don't have to  
18 declare any capital gains at that particular time. I  
19 think it was called a Starker Exchange. And we talked  
20 about that.

21 And he suggested that he had a house in  
22 Arizona that he would sell to us, that he would take  
23 care of having it rented out. That we would get the  
24 tax write-off in terms of depreciation. And at the  
25 end of three years or at the most five years, he would

1 taxes for them. At least that's what they thought.  
2 And he also felt that there were a lot of businessmen  
3 in the area. He made references to Green Valley and  
4 things like that, who were opposed to this because it  
5 would be competition for them and so forth. But that  
6 he had some other ideas, and the other ideas  
7 eventually became the Dacono project, which, in  
8 effect, was I thought going to be almost the same type  
9 of thing, only now it was in Colorado and now it was  
10 at the intersection or -- I believed of a major  
11 interstate highway and well traveled routes and so  
12 forth.

13 Q. And when did you actually first hear about  
14 that Dacono outlet mall project?

15 A. I think we must have heard about that in 1993  
16 or 1994. I know he came to visit us in Florida in  
17 19 -- I think it was 1994. He wanted to see our --  
18 the community we lived in because we lived in a -- we  
19 had a retirement community. Our manufactured home was  
20 in this community, and it was really quite a nice  
21 community with a lot of facilities for people, kind of  
22 a mini Sun City type of thing only with manufactured  
23 homes.

24 And I was telling him, you know, you can do a  
25 lot with manufactured homes. And if there's a need

1 exchanges of securities and things. But it was  
2 always -- had nothing to do with Dacono and nothing to  
3 do with him personally getting money. But within a  
4 very short time, one day we got a letter from Schwab  
5 headquarters saying Mr. Stedman is not going to be  
6 representing you anymore. And we didn't know why, but  
7 we thought, well, maybe he's now going to put his full  
8 focus on these projects of his. So, therefore, we  
9 didn't think anything of it.

10 But actually, within a short period of time,  
11 we felt a certain amount of uneasiness. And the money  
12 that didn't go into Dacono, we took out and  
13 transferred to another firm in Florida.

14 Q. How much money did go into Dacono and when,  
15 if you can tell us?

16 A. Well, between the two of us, it was close to  
17 \$90,000. I think it was about \$42,000 and \$47,000, a  
18 little bit more.

19 Q. Is that the \$47,000 that's reflect under the  
20 same Nancy L. Prins on your chronology here, page 3 of  
21 Exhibit S-26? There's an entry on 12/7/1995 at the  
22 top --

23 A. Yes.

24 Q. The one at the top, 12/7/1995, for Jan V.  
25 Prins, \$54,880. Is that the amount of money that you

1 invested in the Dacono project with Mr. Stedman?

2 A. I don't know if that was the actual amount.  
3 I think the figures that you're looking at there --  
4 well, wait a minute. That would have come from our  
5 account. Yeah, I would say that's it. \$54,880 and  
6 47. Close to \$100,000.

7 Q. And attached to that page, you see there are  
8 some promissory notes.

9 A. That's right.

10 Q. Are these notes that were given to you by  
11 Mr. Stedman?

12 A. Yes. From Mr. Stedman. And they said  
13 that -- they were signed by him, and they said, I, we,  
14 Profutura, L.L.C. And for instance, in the first one  
15 on my wife's, it says first Trust Company of America,  
16 IRA Nancy L. Prins and it gives the account number.  
17 And it does the same on the other notes.

18 Q. The first one is dated December 8, 1996. Is  
19 that the first note that you actually received from  
20 Mr. Stedman as far as you can remember?

21 A. The first note for money to go directly into  
22 Dacono, yes.

23 Q. And then the next one is dated December 8,  
24 1997. And that is for \$66,087.84. And that was for  
25 Nancy Prins?

1                                   MICHAEL DRAKE,  
2   called as a witness on behalf of Securities Division,  
3   having been first duly sworn by the certified court  
4   reporter, was examined and testified telephonically as  
5   follows:

6

7

DIRECT EXAMINATION

8

9       Q. --(BY MS. JOHNSON) Mr. Drake, my name is Pam  
10   Johnson. I'm an attorney for the Securities Division  
11   of the Arizona Corporation Commission. And we are  
12   here taking testimony from witnesses related to an  
13   investment that was called the Dacono Factory Outlet  
14   Mall project. Are you familiar with that?

15       A. Generally, yes.

16       Q. All right. And have you also heard of  
17   Charles Stedman?

18       A. Oh, yes.

19       Q. Okay. And we have some documents that were  
20   sent from you to Jerry Lowe. There's a letter dated  
21   June 22, 2001, that I'm looking at. Do you recall  
22   that letter that you sent to Mr. Lowe?

23       A. Yes, I do.

24       Q. And attached to that is a letter dated June  
25   18, 2001, to you from a Kenneth Moeller. And there

1 are some attachments to that, including Ethel Gross  
2 Revocable Living Trust and a schedule of outstanding  
3 promissory notes from Charles Stedman as of May 31,  
4 2001. Are you familiar with that documentation?

5 A. Yes.

6 Q. The schedule is four pages, and it purports  
7 to be a list of promissory notes and also a schedule  
8 of payments that were made of distributions to Karin  
9 Sperlich. Are you familiar with that?

10 A. Generally speaking, yes. I reviewed that  
11 when I received it from Mr. Moeller. I've not frankly  
12 gone through to verify his figures. But I think, as I  
13 said in the letter, for this purpose, we accept those  
14 figures.

15 MR. HEURLIN: I have no objection to exhibits  
16 28A or 28B, if that can speed things up.

17 MS. JOHNSON: Very good.

18 Q. (BY MS. JOHNSON) 28B. That was Mr. Heurlin  
19 that just spoke. 28B is a letter dated June 22, 2001,  
20 from you again to Jerry Lowe, attaching promissory  
21 notes by Charles Stedman to Ethel E. Gross Revocable  
22 Living Trust. 21 promissory notes given to you by  
23 Mr. Heurlin, Mr. Stedman's attorney; is that correct?

24 A. Yes.

25 Q. And as far as you're aware, do these

1 promissory notes reflect monies that were invested by  
2 Charles Stedman from Ethel Gross's Revocable Living  
3 Trust to the Dacono Factory Outlet Mall project?

4 A. Yes, that's my understanding.

5 Q. And you got that understanding from whom?

6 A. From Mr. Stedman's attorneys.

7 Q. Including Bruce Heurlin?

8 A. Yes.

9 Q. At this point in time, according to your  
10 letter dated June 22, the notes total \$777,310; is  
11 that correct?

12 A. Yes, I believe so.

13 Q. And your letter says that there have been  
14 some distributions. And that Mr. Stedman still owes  
15 the estate of Ethel Gross \$714,191.30 as a result of  
16 these investments in the Dacono project; is that  
17 correct?

18 A. Well, I think technically, the money may be  
19 owed to her trust rather than her estate. And that is  
20 the figure that Mr. Moeller calculated, which, as I  
21 say, we accept for these purposes.

22 Q. All right. Now, would that \$714,191 include  
23 principal and interest?

24 A. Yes.

25 Q. And as far as you know, who was responsible

1 for making decisions on behalf of the trust regarding  
2 investments for the period of November 27, 1995,  
3 through the period of June 22nd, 1996?

4 A. Who was responsible for making investments by  
5 the trust?

6 Q. Yes. Who was responsible for making the  
7 decisions to make those investments?

8 A. Well, I'm presuming Mr. Stedman did. He was  
9 appointed by the court to be personal representative  
10 of Ms. Gross's estate under her will. And as I  
11 recall, he was also trustee of her revocable trust.  
12 So he would have had responsibility for handling her  
13 funds and distributing them according to the terms of  
14 the trust or will.

15 Q. And as far as you are aware, did Mr. Stedman  
16 or do you have an opinion as to whether Mr. Stedman  
17 was authorized to make these investments of  
18 Mrs. Gross's revocable living trust money?

19 A. Well, I don't recall the specific terms of  
20 the trust and what authority it may have given him,  
21 but clearly there were specific beneficiaries of that  
22 trust, including the remainder beneficiary, Karin  
23 Sperlich, and those funds should have gone to the  
24 beneficiaries.

25 Q. And was Ms. Sperlich aware that these funds

1 were being invested in the Dacono project?

2 A. To my knowledge, she was not at the time that  
3 that was done.

4 Q. So Ms. Sperlich at least did not authorize  
5 these investments of Ethel Gross's trust money; is  
6 that correct?

7 A. Yes, I believe it is.

8 Q. And what is the relationship of Karin  
9 Sperlich to Ethel Gross?

10 A. She was a relative. I don't recall the  
11 degree of relation, but she was a niece or a cousin or  
12 some such of Ms. Gross.

13 Q. As of this time, are you aware of what the --  
14 as of this time, do you consider that the \$714,191  
15 is -- is there any other source of repayment of that  
16 money that you're aware of besides the Dacono project?

17 A. It's not clear what other assets Mr. Stedman  
18 may have to repay this money. It's been my feeling  
19 that as a practical matter, the only way Ms. Sperlich  
20 was going to get paid was if this Dacono project were  
21 successful and Mr. Stedman and his partners got  
22 construction financing so they were reimbursed what  
23 they put in it. And then in turn, Stedman would use  
24 that money to repay Ms. Gross's estate and  
25 Ms. Sperlich.

1 Q. Are you aware of whether the trust has any  
2 documentation from Mr. Stedman -- is there any  
3 documentation you're aware of that any beneficiary of  
4 the trust received notification of the transfer of  
5 these funds from the trust by Mr. Stedman?

6 A. I'm not aware of any notification.

7 MS. JOHNSON: Thank you. I have no more  
8 questions, but Mr. Heurlin may have a question for  
9 you.

10

11

CROSS-EXAMINATION

12

13 Q. (BY MR. HEURLIN). Would you agree that at  
14 least on your understanding that Mr. Stedman has no  
15 assets to repay any debts?

16 A. I have no information about what assets he  
17 may have. We've recently requested that, but he has  
18 not responded.

19 Q. Are you aware of any -- let me ask you this:  
20 How long have you represented Karin Sperlich?

21 A. I'm not certain. Probably since 1998, at  
22 least, perhaps earlier.

23 Q. And during the course of that time, have you  
24 made efforts to determine the assets that Mr. Stedman  
25 had?

1 A. Yes.

2 Q. And as of today, are you aware of any real  
3 property that Mr. Stedman has any interest in directly  
4 or indirectly, other than the Dacono property in  
5 Colorado?

6 A. I'm not aware of any.

7 Q. Are you aware of any stock accounts, bank  
8 accounts that Mr. Stedman has any interest in directly  
9 or indirectly at all?

10 A. No.

11 MR. HEURLIN: I have nothing further.

12 AACALJ RODDA: I don't have anything.

13

14 REDIRECT EXAMINATION

15

16 Q. (BY MS. JOHNSON) I just have one other.

17 When did Mrs. Ethel Gross pass away?

18 A. The question is when did she?

19 Q. Yes.

20 A. I'm going to say in 1995 sometime. I don't  
21 know the date.

22 Q. Prior to the issue of any of these promissory  
23 notes?

24 A. Oh, yes. I'm quite certain of that because I  
25 don't think Stedman had any authority to handle her

1 financial accounts until her death.

2 Q. All right. And how old was Mrs. Gross when  
3 she passed?

4 A. I don't know. She was quite elderly, I  
5 believe.

6 MS. JOHNSON: Thank you so much for calling  
7 in, Mr. Drake.

8 THE WITNESS: You're welcome.

9 (The witness was excused.)

10 MS. JOHNSON: Could we take a two-minute  
11 break to bring in our next witness.

12 AACALJ RODDA: Let's take five minutes.

13 (Recess taken.)

14 MS. JOHNSON: I had we'd like to call Michael  
15 Keith to the witness stand.

16

17

MICHAEL KEITH,

18 called as a witness on behalf of Securities Division,  
19 having been first duly sworn by the Certified Court  
20 Reporter, was examined and testified as follows:

21

22

DIRECT EXAMINATION

23

24 Q. (BY MS. JOHNSON) Hello, Mr. Keith. I'm Pam  
25 Johnson with the Securities Division. We've met. I'd

1 that.

2 MS. JOHNSON: No problem, then.

3 AACALJ RODDA: So we're admitting S-17.

4 Great. And you have Mr. Testino is up next?

5 MS. JOHNSON: Yes.

6 AACALJ RODDA: Thank you, counsel, for doing

7 that.

8 MS. JOHNSON: All right. Thank you.

9

10

CHARLES TESTINO,

11 called as a witness on behalf of Securities Division,

12 having been first duly sworn by the Certified Court

13 Reporter, was examined and testified as follows:

14

15

DIRECT EXAMINATION

16

17 Q. (BY MS. JOHNSON) Mr. Testino, I would like  
18 to direct your attention to Exhibit S-8. By the way,  
19 I'm Pam Johnson. We've met before, right?

20 A. Yes.

21 Q. This is a certified copy of the consent order  
22 that you signed with the Corporation Commission  
23 relating to your participation in the Dacono project.  
24 Did you have a chance to review that and review it  
25 with your counsel and have input onto that consent

1 order before you signed it?

2 A. Yes, I did.

3 Q. And you have made certain admissions -- you  
4 have admitted for purposes of this proceeding and any  
5 related proceedings in any administrative agencies  
6 that the facts that are contained in there are  
7 correct. Is that true?

8 A. Yes.

9 Q. And you've also agreed you've admitted to the  
10 conclusions of law contained in that consent order; is  
11 that correct?

12 A. Yes.

13 Q. And you've agreed to a certain restitution  
14 amount and a certain penalty amount and a cease and  
15 desist order; is that correct?

16 A. Yes.

17 Q. Now, I want to show you what has been marked  
18 as -- did you invest in this project?

19 A. Yes, I did.

20 Q. I want to show you what's been marked as  
21 Exhibit S-29. Do you recognize that?

22 A. Promissory note.

23 Q. Is that a blank promissory note? Is it the  
24 form that you used in soliciting private investors in  
25 this project?

1 A. Yes.

2 Q. And who gave you that form of note  
3 originally?

4 A. The principals of the project.

5 Q. Does that include Mr. Stedman?

6 A. Yes, ma'am.

7 Q. And did Mr. Stedman authorize you to use that  
8 note to solicit investors in the Dacono project?

9 A. Yes, he did.

10 Q. And who gave you information that you should  
11 give to investors about the project?

12 A. The principals of the project.

13 Q. Does that include Mr. Stedman?

14 A. Yes, it does.

15 Q. Did Mr. Stedman know that you were passing  
16 along that information to potential private investors?

17 A. Yes, he did.

18 Q. And did you have pretty continuous  
19 communications with Mr. Stedman about the project?

20 A. Yes.

21 Q. Was it your understanding that the notes that  
22 said they were secured by a deed of trust would be  
23 recorded?

24 A. Yes.

25 Q. And also the rollovers of those notes?

1 AACALJ RODDA: Thank you, Mr. Testino.

2 (The witness was excused.)

3 AACALJ RODDA: Your next witness is?

4 MS. JOHNSON: Mr. Davis. And then

5 Mr. Decker, and then we're through.

6 (Discussion off the record.)

7

8 KEITH B. "SKIP" DAVIS,

9 called as a witness on behalf of Securities Division,  
10 having been first duly sworn by the Certified Court  
11 Reporter, was examined and testified as follows:

12

13 DIRECT EXAMINATION

14

15 Q. (BY MS. JOHNSON) Mr. Davis, I'm Pam Johnson  
16 with the Securities Division. We've met before,  
17 correct?

18 A. Correct.

19 Q. I'm handing you what's been marked as S-9 to  
20 this proceeding. It is a copy of your consent order.  
21 It is a certified copy. You had an opportunity to  
22 have input on the statements that were made in this  
23 order; is that correct?

24 A. Yes.

25 Q. And by the time we were finished with our

1 discussions, you agreed that you were -- you agreed to  
2 admit to the allegations and the statements in the  
3 order for purposes of this proceeding and any related  
4 proceedings in any other administrative proceedings in  
5 this state; is that correct?

6 A. Correct.

7 Q. And to the best of your knowledge and  
8 ability, the factual statements contained in that  
9 order are correct. Is that true?

10 A. True.

11 Q. And you've also agreed to the conclusions of  
12 law, which include the fact that this is a security,  
13 that the promissory notes are securities, and that --  
14 correct?

15 A. As instructed to me, yes.

16 Q. And that you will pay restitution and  
17 penalties, and you will cease and desist from the sale  
18 of these securities, correct?

19 A. Correct.

20 Q. Now, I'm going to hand you what's been marked  
21 as Exhibit No. S-29 to this proceeding. It's a blank  
22 form of a promissory note. Is this a copy of a form  
23 that was used by yourself to solicit investors --  
24 private investors in the Dacono Factory project?

25 A. Yes. This is one example.

1 Q. And who gave you that form to use?

2 A. I don't know -- it came from a meeting I had  
3 with Mr. Decker and Mr. Stedman.

4 Q. Did Mr. Stedman authorize you to use this  
5 form to solicit funds from private investors?

6 A. Yes.

7 Q. And you invested in this project yourself.  
8 Is that true?

9 A. True.

10 Q. And you signed -- or you received the same  
11 form of note as what you've just identified, correct?

12 A. Correct.

13 Q. Did you believe your note was secured?

14 A. Yes.

15 Q. Did you believe that the other notes that you  
16 issued on behalf of Mr. Stedman were secured?

17 A. Up to a point in time.

18 Q. And what point in time was that?

19 A. That would have been sometime the first  
20 quarter of '99.

21 Q. Was that December 26, 19 -- let me refer to  
22 the Linaker -- are you referring to a meeting between  
23 Mr. Linaker and Mr. D'Antonio and Mr. Stedman and  
24 Mr. Decker and Mr. Testino and yourself in December of  
25 1998?