



0000116328

ORIGINAL EXCEPTION

12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KARP, HEURLIN & WEISS, P.C.

3060 NORTH SWAN ROAD, SUITE 100
TUCSON, ARIZONA 85712-1225
TEL (520) 325-4200
FAX (520) 325-4224

Bruce R. Heurlin, SBN / PCC
Attorney for Charles Ray Stedman
and Profutura, L.L.C.

RECEIVED

2001 DEC -7 A 10:32

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of:

CHARLES RAY STEDMAN
3001 East Frontage Road
Amado, AZ 85629

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.

DOCKET NO. S-03353A-00-0000

**EXCEPTIONS TO THE
RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE**

Arizona Corporation Commission

DOCKETED

DEC 07 2001

DOCKETED BY	
-------------	--

Charles Ray Stedman and Profutura, L.L.C. (collectively, Stedman) submit the following exceptions to the recommendation, in the form of an Opinion and Order, from

1 Administrative Law Judge Jane Rodda.

2 The Securities Division of the Arizona Corporation Commission proceeded against ten
3 separate Respondents, including Stedman and Profutura. Of the ten Respondents, only
4 Stedman and Profutura exercised their rights for a hearing.

5 Stedman and Profutura must be considered individually, and not lumped together with
6 other Respondents.

7 The final Opinion and Order must be based on testimony and evidence admitted at the
8 hearing.

9 The following exceptions generally are based on four undisputed facts, as proved at the
10 hearing:

11 1. Stedman is an individual and is entitled to be considered alone and not
12 lumped together with other Respondents. Statements in the proposed Opinion and
13 Order referring to "Respondents" and lumping Stedman together with other
14 Respondents are improper.

15 2. No Respondent ever offered to sell or sold any note. Investors loaned
16 money in exchange for promissory notes. The investors received the promissory notes,
17 not Stedman. Those promissory notes were never offered for sale or sold to or by
18 investors.

19 3. Stedman never had any contact with any investor prior to the time any
20 investor loaned money. Stedman's contact with only a few investors and those contacts
21 first occurred after the investors had loaned money. Therefore, Stedman did not make
22 any misrepresentation or omission prior to or at the time of the loans. Stedman had
23 nothing to do with disclosures or with "Big Boy letters" prior to or at the time of the
24 loans.

25 4. In the context of considering to loan money, investors were asked to sign
26 "Big Boy letters." The Big Boy letters that investors signed are the investors'
27 statements that investors were accredited investors. Investors have duties and
28 responsibilities that include reading documents, understanding documents, and asking

1 questions before signing a document. Although Stedman never talked with any investor
2 prior to the investor loaning money, Stedman had a right to rely on an investor's "Big
3 Boy letter" as being a true statement by the investor. Stedman had no reason to believe
4 that investors lied and submitted false "Big Boy letters."

5 Based on these four principles, Stedman and Profutura submit the following exceptions,
6 referencing the page and line numbers of the proposed Opinion and Order.

7 Because Stedman does not have a transcript of the hearing, Stedman cannot cite the
8 transcript.

9 **EXCEPTIONS**

10 1. Page 3, Lines 8-9

11 Prior to 1993, Stedman had nothing to do with any effort to raise money because
12 all of the money invested in the Dacono project was money from Stedman. Prior to 1993, no
13 investor was involved in loaning money to Stedman. Other than Stedman, there were no
14 investors.

15 2. Page 3, Lines 12-15

16 Stedman did not approach Davis to use promissory notes.

17 3. Page 3, Lines 15-16

18 Stedman did not offer Davis commissions of 10 percent of "all investor funds
19 secured" and an equity interest in the project. Stedman had nothing to do with offering Davis
20 anything.

21 4. Page 3, Lines 19-21

22 Stedman did not authorize Davis and Testino to use the notes to raise additional
23 funds from private investors and did not agree to pay commissions of 10 percent of all money
24 raised and to provide additional equity interest in the project. Stedman did not authorize Davis
25 or Testino to do anything.

26 5. Page 4, Lines 6-9

27 Stedman did not tell investors anything about interim financing, construction
28 financing, development of the Dacono project, or payment of the notes on the due date or

1 close of the construction financing. Stedman did not talk to or meet with any investor until
2 sometime after the investor already had loaned money. Stedman was instructed not to contact
3 any investor, unless requested to do so. The statement "Investors were told" does not identify
4 who told which investors about these subjects. Stedman was not that person.

5 6. Page 4, Lines 10-15

6 Stedman had nothing to do with securing any loan by a deed of trust. Stedman
7 did not discuss this subject with any investor prior to or at the time any investor loaned money.
8 The property was in Colorado. Stedman did not deal with the title company in Colorado.
9 Moreover, investors had a duty to protect their own interests by verifying that security by deed
10 of trust was placed at the time their loans were made.

11 7. Page 4, Lines 16-17

12 Stedman had nothing to do with the preparation of, explanation of, or signing
13 by investors of the "Big Boy letters."

14 8. Page 4, Lines 24-25

15 The use of the term Respondents includes all ten Respondents. Stedman had
16 nothing to do with attempts to obtain construction financing. Stedman did not tell investors
17 anything prior to or at the time investors loaned money. Stedman never told any investor that
18 Stedman was attempting to obtain construction financing and believed that that financing
19 would be in place within a short period of time. This does not indicate who "told investors."

20 9. Page 4, Lines 27-28 to Page 5, Line 1

21 The term Respondents at Line 27 includes all ten Respondents. No Respondent,
22 and not Stedman, sold any note to any investor. **An investor loaning money in exchange for**
23 **a note is not a sale of the note.** Stedman did not offer and sell "unsecured" notes to anyone.

24 10. Page 5, Lines 2-3

25 Again, no note was offered for sale and no note was sold. Not only did Stedman
26 not speak directly with every investor, Stedman did not speak with any investor prior to or at
27 the time the investor loaned money. Stedman only spoke to a few investors and always after
28 an investor already had loaned money.

1 11. Page 5, Lines 4-5
2 Stedman did not receive checks or deposit checks.

3 12. Page 5, Lines 6-8
4 Stedman did not authorize Davis and Testino to solicit funds.

5 13. Page 5, Lines 12-16
6 Stedman did not "represent" anything to any investor prior to or at the time the
7 investor loaned money. Stedman did not deal with investors. The name(s) of the investor(s)
8 are not identified regarding Stedman's alleged misrepresentation.

9 14. Page 5, Lines 17-27
10 Stedman did not represent that notes were secured or that the total of notes
11 secured would not exceed one million dollars. Again, Stedman did not deal with any investor
12 prior to or at the time the investor made a loan. The name(s) of the investor(s) are not
13 identified regarding Stedman's alleged misrepresentation.

14 15. Page 5, Line 28 to Page 6, Lines 1-5
15 Stedman did not "represent" anything to the investors regarding the use of loan
16 monies because Stedman had nothing to do with any investor prior to or at the time the
17 investor loaned money. In any event, the expenses stated are legitimate development expenses.
18 The name(s) of the investor(s) are not identified regarding Stedman's alleged
19 misrepresentation.

20 16. Page 6, Lines 6-10
21 Because Stedman did not deal with any investor, Stedman did not fail to disclose
22 anything to any investor. The name(s) of the investor(s) are not identified regarding Stedman's
23 alleged omission.

24 17. Page 6, Lines 11-15
25 Because Stedman did not deal with any investor, Stedman did not fail to disclose
26 anything to any investor. The name(s) of the investor(s) are not identified regarding Stedman's
27 alleged omission.

28

1 18. Page 6, Lines 16-25

2 Again, because Stedman did not deal with any investor, Stedman did not fail to
3 disclose anything to any investor. The name(s) of the investor(s) are not identified regarding
4 Stedman's alleged omission.

5 19. Page 6, Lines 26-28 to Page 7, Lines 1-5

6 Because Stedman did not deal with any investor, Stedman did not fail to disclose
7 anything to any investor. Moreover, Testino was terminated on September 15, 1998. By that
8 time, many investors, if not all, already had made investments. Testino's termination date,
9 after investors already had invested, could not have been disclosed at an earlier date.
10 Moreover, Stedman has never seen any SunAmerica Securities, Inc. or NASD document, as
11 apparently quoted. Stedman could not fail to disclose when Stedman had no knowledge of the
12 subject. The name(s) of the investor(s) are not identified regarding Stedman's alleged
13 omission.

14 20. Page 7, Lines 6-7

15 Stedman did not fail to disclose anything because Stedman had no contact with
16 the investors. Again, no notes were sold, so Respondents were **not** selling notes. The name(s)
17 of the investor(s) are not identified regarding Stedman's alleged omission.

18 21. Page 7, Lines 8-10

19 Stedman did not discuss with investors the risk of not getting their money out
20 in 45 to 90 days. Stedman had no discussion regarding any subject or any risk with any
21 investor because Stedman did not deal with any investor prior to or at the time an investor
22 loaned money. This does not mean that risks were not discussed with investors.

23 22. Page 7, Lines 10-11

24 Stedman was not aware of any disclosures being given to private investors
25 because Stedman did not deal with investors. This does not mean that disclosures were not
26 given to investors. Moreover, at the hearing, investors testified that they knew of risks with
27 their loaning money. Investors knew that the high interest rates on their short-term loans
28 reflected risky loans.

1 23. Page 7, Lines 12-13

2 Stedman believed that the Big Boy letters signed by the investors were true and
3 had no reason to believe that the investors lied and submitted false Big Boy letters. As
4 previously stated, Stedman had nothing to do with the Big Boy letters.

5 24. Page 7, Lines 26-28

6 The word "of" at Line 27 should be "for." Stedman did not authorize Davis and
7 Testino to solicit investors. If Stedman is a dealer and responsible for Davis' and Testino's
8 acts, Stedman is not responsible for offerings and sales of notes because no notes were offered
9 for sale and no notes were sold. In addition, if Stedman is responsible for Davis' and Testino's
10 acts, this does not mean that Stedman made any false representations or failed to disclose
11 anything.

12 25. Page 9, Lines 13-15

13 Stedman did not approach Davis to use promissory notes to raise money for any
14 reason.

15 26. Page 9, Lines 15-16

16 Stedman did not offer commissions or equity interest to Davis.

17 27. Page 9, Lines 20-21

18 Stedman did not authorize Davis and Testino to use notes to raise additional
19 funds from private investors or agree to pay commissions of 10 percent or an additional equity
20 interest.

21 28. Page 10, Lines 7-10

22 Stedman did not tell investors anything regarding interim financing or payment
23 of the notes at the close of construction financing. The term Respondents includes all ten
24 Respondents.

25 29. Page 10, Lines 18-19

26 The term "promoters" is undefined.

27 30. Page 10, Lines 27-28

28 The term Respondents includes all ten Respondents. Stedman did not attempt

1 to obtain construction financing. Stedman did not tell investors that financing would be in
2 place within a short period of time.

3 31. Page 11, Lines 2-3

4 No notes were sold to any investor.

5 32. Page 11, Lines 3-4

6 Stedman never offered or sold "unsecured" notes to any investor. Again, no
7 notes were ever sold to any investor.

8 33. Page 11, Lines 5-6

9 Not only did Stedman not speak directly with every investor, Stedman did not
10 speak with any investor prior to or at the time the investor decided to loan money.

11 34. Page 11, Lines 6-7

12 Stedman never authorized Davis and Testino to solicit funds.

13 35. Page 11, Lines 12-16

14 Stedman did not "represent" anything to any investor prior to or at the time the
15 investor loaned money. Stedman did not deal with investors. The name(s) of the investor(s)
16 are not identified regarding Stedman's alleged misrepresentation.

17 36. Page 11, Lines 17-26

18 Stedman did not represent that notes were secured or that the total of notes
19 secured would not exceed one million dollars. Again, Stedman did not deal with any investor
20 prior to or at the time the investor made a loan. The name(s) of the investor(s) are not
21 identified regarding Stedman's alleged misrepresentation.

22 37. Page 11, Lines 27-28 to Page 12, Lines 1-4

23 Stedman did not "represent" anything to the investors regarding the use of loan
24 monies because Stedman had nothing to do with any investor prior to or at the time the
25 investor loaned money. In any event, the expenses stated are legitimate development expenses.
26 The name(s) of the investor(s) are not identified regarding Stedman's alleged
27 misrepresentation.

28

1 38. Page 12, Lines 5-9

2 Because Stedman did not deal with any investor, Stedman did not fail to disclose
3 anything to any investor. The name(s) of the investor(s) are not identified regarding Stedman's
4 alleged omission.

5 39. Page 12, Lines 10-14

6 Because Stedman did not deal with any investor, Stedman did not fail to disclose
7 anything to any investor. The name(s) of the investor(s) are not identified regarding Stedman's
8 alleged omission.

9 40. Page 12, Lines 15-23

10 Again, because Stedman did not deal with any investor, Stedman did not fail to
11 disclose anything to any investor. The name(s) of the investor(s) are not identified regarding
12 Stedman's alleged omission.

13 41. Page 12, Lines 24-28 to Page 13, Lines 1-2

14 Because Stedman did not deal with any investor, Stedman did not fail to disclose
15 anything to any investor. Moreover, Testino was terminated on September 15, 1998. By that
16 time, many investors, if not all, already had made investments. Testino's termination date,
17 after investors already had invested, could not have been disclosed at an earlier date.
18 Moreover, Stedman has never seen any SunAmerica Securities, Inc. or NASD document, as
19 apparently quoted. Stedman could not fail to disclose when Stedman had no knowledge of the
20 subject. The name(s) of the investor(s) are not identified regarding Stedman's alleged
21 omission.

22 42. Page 13, Lines 3-4

23 Stedman did not fail to disclose anything because Stedman had no contact with
24 the investors. Again, no notes were sold, so Respondents were **not** selling notes. The name(s)
25 of the investor(s) are not identified regarding Stedman's alleged omission.

26 43. Page 13, Lines 8-9

27 No promissory note was ever offered for sale or sold to any investor.
28

REQUEST FOR ADDITIONAL FINDINGS OF FACT

Stedman requests the following additional findings of fact:

1. There was no evidence that Stedman intended to defraud any investor.
2. There was no evidence, prior to or at the time any investors loaned money, that Stedman made any false representation or failed to disclose any material matter to any investor.
3. Stedman acted in good faith in dealing with investors.
4. Davis and Testino testified that Stedman never asked or instructed Davis and Testino to lie, mislead, or omit any material fact in dealing with investors.

Dated December 5, 2001.

KARP, HEURLIN & WEISS, P.C.



By: Bruce R. Heurlin
Attorneys for Charles Ray Stedman and
Profutura, L.L.C.

THE LAW FIRM OF
KARP, HEURLIN & WEISS, P.C.
3060 NORTH SWAN ROAD, SUITE 100
TUCSON, ARIZONA 85712-1225
TEL (520) 325-4200 FAX (520) 325-4224

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE LAW FIRM OF
KARP, HEURLIN & WEISS, P.C.
3060 NORTH SWAN ROAD, SUITE 100
TUCSON, ARIZONA 85712-1225
TEL (520) 325-4200 FAX (520) 325-4224

1 Copy of the foregoing mailed/faxed/delivered
December 5, 2001, to:

2 Jane Rodda
3 Administrative Law Judge
4 400 W Congress #221
5 Tucson, Arizona 85701
6 FAX: 628-6559

7 Moira A. McCarthy
8 Assistant Attorney General
9 Arizona Attorney General's Office
10 1275 W Washington Street
11 Phoenix, Arizona 85007
12 FAX: 602-542-4377

13 W. Mark Sendrow, Director
14 Securities Division
15 Arizona Corporation Commission
16 1300 W Washington Street
17 Phoenix, Arizona 85007
18 FAX: 602-594-7430

19 Pamela T. Johnson
20 Securities Division
21 Arizona Corporation Commission
22 1300 W Washington, Third Floor
23 Phoenix, Arizona 85007
24 FAX: 602-594-7470

25 Lindsay Brew
26 Haralson, Miller, Pitt & McAnally, P.L.C.
27 One S Church Avenue, Suite 900
28 Tucson, Arizona 85701-1620
FAX: 624-5080

Clifford B. Altfeld
Leonard Felker Altfeld Greenberg & Battaile, P.C.
250 N Meyer Avenue
Tucson, Arizona 85701
FAX: 622-7967
Attorneys for Wendell T. Decker, Jr.,
Oxford Development, L.L.C. and
CNT Family Fun Outlets, Inc.

Keith B. Davis

24
25
26
27
28