



0000116330

ORIGINAL

28
OPEN MEETING AGENDA ITEM
RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2001 DEC 14 A 9:11

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

**DIVISION'S REPLY TO STEDMAN'S
RESPONSE TO SECURITIES
DIVISION'S EXCEPTIONS TO
HEARING OFFICER'S
RECOMMENDED OPINION AND
ORDER**

Arizona Corporation Commission
DOCKETED

DEC 14 2001

DOCKETED BY *rac*

The Securities Division replies to Stedman's Response to Securities Division's Exceptions to Hearing Officer's Recommended Opinion and Order as follows.

1. Intent is not a necessary element for the violations asserted in the Order.

Findings relating to Stedman's alleged innocent "beliefs" should be omitted from the Opinion and Order because intent is not a necessary element for any of the violations asserted in the Order.

1 Moreover, Stedman offered no evidence of his alleged innocent beliefs. And contrary to any inference
2 of counsel, there was no evidence that Stedman or Profutura even invested any of their own money in
3 the Dacono project.

4 **2. There is substantial evidence in the record to show Stedman knew that he could not**
5 **obtain financing and pay the promissory notes he issued to investors.**

6 Stedman directly represented to investors that their investments would be short-term every time
7 that he signed a short-term note. In addition, Charles Testino and Keith Davis, who solicited the
8 majority of the private investors, testified at hearing that Stedman authorized them to use his notes to
9 solicit funds from investors. Testino testified that Stedman himself was the source of the information
10 given to investors about the project. *See* Transcript of Hearing, attached to the Division's Exceptions,
11 at page 224, lines 7-14. Therefore, Stedman indirectly misrepresented the status and conditions of the
12 project every time his salesmen made any of the misrepresentations and omissions that are stated in the
13 administrative law judges' Recommended Opinion and Order.

14
15 The substance of the misrepresentations and omissions listed in the Recommended Opinion and
16 Order belie any statement or findings that Stedman continued to believe that the investors would
17 receive payment within the short period of time that was represented to them, as the project got deeper
18 and deeper in debt. In fact, there was never any true commitment for construction financing. Stedman
19 knew at the time that he signed the notes that he could not pay them when they became due, absent
20 some miracle of obtaining construction financing. Unfounded hopes cannot yield innocent beliefs.

21 Moreover, contrary to counsel's repeated avowals, there was repeated witness testimony at
22 hearing that Stedman did indeed directly communicate with investors, and failed to disclose the true
23 desperate financial conditions of the project at the time they made their investments. In addition to Jan
24 Prins' testimony, discussed in the Divisions' Exceptions, Investor Michael Keith testified that he met
25 with Stedman directly before making investments for himself and his company. *See* Transcript of
26 Hearing, attached hereto, at page 147-150, 155-162.

1 Mr. Heurlin's statements about what "Stedman honestly believed" are not admissible as
2 evidence and cannot be the basis for findings contained in the Order against his client. The ongoing
3 efforts to obtain construction financing prove only that the promoters were successful in perpetuating
4 their drain on private investors' funds with misrepresentations of the imminent success of the project.
5 The evidence at hearing demonstrated that new investors would not have invested if they had known the
6 truth about the financial condition of the project, or the promoters.

7 **3. Evidence was admitted that the funds from Ethel Gross Revocable Living Trust went**
8 **into the project.**

9 Stedman objects to the inclusion of any restitution to the Estate of Ethel Gross. He denies that
10 the notes were issued in connection with an investment in the Dacono project. This is contrary to the
11 evidence admitted at hearing. Stedman issued 21 promissory notes (Hearing Exhibit S-28B) to the
12 Ethel Gross Revocable Living Trust. The attorney for the beneficiary of the Ethel Gross Revocable
13 Living Trust, Michael Drake, testified that, based upon statements made to Drake by Mr. Stedman's
14 own attorneys including Bruce Heurlin, those notes reflected monies belonging to the Trust that Charles
15 Stedman invested in the Dacono Factory Outlet Mall project. See Reporter's Transcript of Proceedings,
16 attached to the Division's Exceptions, at page 140, line 18 to page 141, line 8.

17 The restitution amount should include the total invested in Stedman's notes by Jan and Nancy
18 Prins and the Ethel E. Gross Revocable Living Trust, consistent with the evidence offered at hearing.

19 Stedman is liable for the restitution ordered, notwithstanding the failure of the project, and
20 notwithstanding his own professed financial condition, which the Division will continue to investigate.

21 RESPECTFULLY submitted this 14th day of December, 2001.

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

1 Original and ten copies filed with the
2 Docket Control this 14th day of December, 2001:

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

6 Copies faxed this 14th day
7 of December, 2001 to:

8 Bruce R. Heurlin, Esq.
9 Karp, Heurlin & Weiss, P.C.
10 3060 North Swan Road, Suite 100
11 Tucson, Arizona 85712-1225
12 FAX: (520) 325-4224

13 Attorneys for Charles Ray Stedman
14 and Profutura, L.L.C.
15 FAX: (520) 325-4224

16 Lindsay Brew, Esq.
17 Haralson, Miller, Pitt & McAnally, P.L.C.
18 One S. Church Avenue, Suite 900
19 Tucson, Arizona 85701-1620
20 FAX: (520) 624-5080
21 Attorneys for Charles W. Testino, Jr. and
22 Arizona Investment Advisors, Inc.

23 Clifford B. Altfeld, Esq.
24 Leonard, Felker, Altfeld, Greenberg & Battaile, P.C.
25 260 N. Meyer Avenue
26 Tucson, Arizona 85701
FAX: (520) 622-7967
Attorneys for Wendell T. Decker, Jr.,
Oxford Development, L.L.C. and
CNT Family Fun Outlets, Inc.

Keith B. Davis
Keith B. Davis, Inc.
Spyglass Enterprises, L.L.C.
6550 N. Silversmith Place
Tucson, Arizona 85750
FAX: (520) 529-1525

PTJ

1 like to ask you to share with us a little bit about
2 your background, where you live.

3 A. My name is Michael Keith. I live at 3955
4 East Camino de Palmas, Tucson.

5 Q. And what is your employment?

6 A. I'm a small contractor. I specialize in
7 historic restoration, mostly in the downtown historic
8 districts.

9 Q. Here in Tucson?

10 A. That's correct.

11 Q. And how long have you done that?

12 A. For the past 16 years.

13 Q. Did you make an investment in the Dacono
14 Factory Outlet Mall project?

15 A. Yes, I did.

16 Q. And when was that?

17 A. The first one was in January of '98, and the
18 second one was in July of '98.

19 Q. And what was the amount of your investments?

20 A. The first one I believe was \$40,000, and the
21 second one was \$54,000.

22 Q. Did you meet with Mr. Stedman prior to making
23 either of those investments?

24 A. Yes, I met with him before I made the second
25 investment in July.

1 Q. And can you tell us what questions you asked
2 about the investment prior to investing and whether
3 Mr. Stedman gave you any answers to your questions.

4 A. Yes. May I refer to my notes?

5 Q. Sure, please do.

6 A. I met with Mr. Stedman and Mr. Testino in
7 their office. I had requested that Mr. Decker be
8 there, but he had called at the last second and said
9 he couldn't make it. The notes that they were signing
10 were against Lot 6. So one of my first questions was
11 whether or not that lot was -- what its value was and
12 how much it was encumbered.

13 I also had questions about the project as a
14 whole, who the contractors were who was ensuring that
15 the bonds are being paid off. And how the investors
16 were going to be paid off. What means that the small
17 investors were going to be paid off if there were any
18 delays to the project.

19 Q. And can you tell us how Mr. Stedman responded
20 to your questions.

21 A. They told me at the time that Lot 6, which is
22 5.6 acres, was worth a million dollars and it wouldn't
23 be encumbered by more than half a million dollars.

24 Q. Did you subsequently learn any differently?

25 A. I subsequently learned that the value of that

1 property is probably -- and this is arguable, half
2 that much. And that there were other people that were
3 already encumbered against that property. But I
4 wouldn't find this out for another 11 months or so, 12
5 months.

6 Q. What other questions did you ask Mr. Stedman
7 prior to your meeting with him -- I believe you gave
8 us two at the first, and I didn't follow up on the
9 second one. What was the second question you asked
10 again, please?

11 A. I asked the question about how the investors
12 were going to be paid off if there were any delays to
13 the project. The project was being touted as being a
14 project that was just about to close and that the
15 developers needed short-term money to help them get
16 from where they were to closing.

17 And my question was, if that doesn't occur,
18 how will the investors be paid off? And I don't
19 remember if it was at that meeting or subsequent
20 meetings that Mr. Stedman was not at, but the answers
21 I was given later at least -- and I don't remember if
22 it was that meeting -- were that the investors would
23 be paid off by new investors coming into the project,
24 and that money would pay off old investors that wanted
25 to get out.

1 Q. Did you have any other questions for
2 Mr. Stedman at your meeting with him prior to making
3 your second investment in July of 1998?

4 A. I asked if the notes were going to be
5 recorded, and I was told that they would. I don't
6 remember who said that at the time, but in that
7 meeting, I asked that question if the notes would be
8 recorded. And I was assured that they would. It
9 would not be for another year when I finally went up
10 to Dacono personally and went to Weld County and went
11 through one of the most archaic computer systems I've
12 ever seen that I was able to determine that our notes
13 were not recorded.

14 I asked if I would get a copy of it, and I
15 was told that the original copies would stay with the
16 developers. Later when I asked for -- and this was
17 not at a meeting with Mr. Stedman, but in later
18 subsequent meetings when I asked about the notes and
19 getting copies, I was told that with so many investors
20 and such a turnaround that they couldn't provide all
21 these copies every time. But I was led to believe
22 that that was indeed the case, that these notes were
23 being recorded.

24 Q. So you thought not only your initial notes
25 but all of your rollovers were being recorded?

1 prior to investing in this project, prior to investing
2 your \$54,000 investment in this project or is there
3 anything else that you learned subsequent to your
4 investment that you weren't told in that meeting that
5 would have made a difference?

6 A. What I wasn't told in that meeting actually
7 becomes very significant. I wasn't told at the
8 meeting that Charles Stedman had a past history of
9 being censured for financial dealings. I did ask the
10 question about Mr. Decker's past bankruptcy because I
11 had remembered some of my subcontractors coming up to
12 me in the late '80s, early '90s, talking about how
13 they'd been left holding the bag on some projects that
14 they had worked on when some developers by the name of
15 Decker had gone under and not paid them back. And I
16 asked that question either at this meeting or
17 subsequent meetings if this was the same Decker and
18 was told, I don't know, when it was clearly the same
19 Decker. So not only was Mr. Stedman's past history
20 not revealed, Mr. Decker's past history was not
21 revealed.

22 Q. If you had known about Mr. Stedman's bar by
23 the NASD or -- and either or about Mr. Decker's
24 bankruptcy, would you have invested in this project?

25 A. No.

1 Q. Any other omissions of material fact,
2 anything else that you were not told that would have
3 made a difference to your investment decision in
4 either January of '98 or July of '98?

5 A. I was never told about the total indebtedness
6 of the project or really how and where this money was
7 coming from and what deals were done.

8 A year later when I made my trip to Weld
9 County, I pulled all the records I could pull on
10 Oxford and Dacono Factory Stores and all the other
11 legal entities, and I came away completely confused,
12 but I also came away with the idea that there was
13 quite a bit of action going on on this project.
14 Titles were being transferred, people were coming in
15 with liens against the property. There was a whole
16 rack of investors I'd never heard of. So I had no
17 idea that all this was going on behind the scenes.

18 If somebody had come and told me, we're
19 constantly searching for money and we're using
20 investors to pay off investors, in conjunction with
21 everything else, I would have never done this deal. I
22 don't think anybody would have ever done this deal.

23 Q. Were you told any risks related to this
24 investment prior to investing or any of the
25 problems -- any problems that had been encountered by

1 the principals?

2 A. No. This was being advertised as a done
3 deal, and a deal that was so sweet that no big lender
4 would pass it up. And not only did they have a
5 primary lender that was ready to go, but people were
6 falling out of the skies with subsequent offers
7 because it was such an attractive deal. And that even
8 if X, Y, and Z didn't sign on the dotted line, there
9 were two-or-three other people waiting in the wings to
10 take it over.

11 Q. Did you understand at the time that you
12 invested if the architectural and engineering plans
13 were already finalized?

14 A. I had assumed from our discussions that all
15 those meetings were held with the City of Dacono with
16 engineering infrastructure. I was to learn later that
17 I think to this day, most of that has not been filed.
18 I learned subsequently through discussions up in --
19 with realtors and other people up in Denver that the
20 infrastructure for the electric and the water may not
21 have even been sufficient to do that project. That
22 the I-25 corridor was growing so quickly that they
23 were outstripping their ability to provide water and
24 electricity. That this could have an impact on the
25 project as far as whether or not they could meet their

1 goals or if they were going to have to do types of
2 co-generation or come up with other ways to get the
3 utilities in place necessary for a project this large.

4 Q. At the time of your investment, did you have
5 a joint net worth -- did you have a net worth in
6 excess of \$1 million?

7 A. No.

8 Q. And did you have an income of in excess of
9 \$200,000 in each of the past two years prior to the
10 investment?

11 A. I wish, but no.

12 Q. Did you sign any kind of documentation that
13 indicated you did have substantial net worth or
14 income?

15 A. Yes.

16 Q. And why did you feel comfortable signing that
17 at that time?

18 A. Actually, I didn't feel comfortable, but it
19 was inferred that this was a formality. Charles
20 Testino had advised me on other financial dealings and
21 knew my financial situation as well as anybody. And
22 the inference was that this was just a formality, that
23 it wasn't an important document. That this was just
24 something that you had to do.

25 Q. And were you asked to sign that what we refer

1 to as the big boy letter at the time of your very
2 first investment in January of '98?

3 A. No. I signed that subsequent to that, but I
4 don't remember exactly when.

5 Q. So your first loan package -- I should give
6 you a copy of your exhibits. And the copy that we
7 have here -- this is S-22. A copy of your first note
8 that we have does have a big boy letter attached to
9 it. And are you saying that at the time that you
10 signed this -- or that you got your copy of this note,
11 this big boy letter was not in here?

12 A. I can't remember exactly when that occurred,
13 but I remember this coming up that, oh, by the way,
14 you need to sign this letter. And it wasn't the time
15 that I gave him the check.

16 Q. But by that time, you'd already made your
17 decision to invest?

18 A. Yes.

19 Q. Now, what was the source of your investment
20 funds?

21 A. They were private funds. Either personally
22 or through my company, Temporary West.

23 Q. Did you at any time actually borrow funds in
24 order to make an investment in this project?

25 A. Yes, I did. And this was for the second

1 investment. I knew that my working capital was
2 getting low, so I went ahead and I used some of the
3 credit lines that I have in place to make the second
4 payment.

5 Q. Were you at any time -- prior to your first
6 or your second investment in January or July of '98 at
7 any time were you told about the uncertainties of
8 getting construction financing for this project?

9 A. -- No. -- This project was being advertised as a
10 golden opportunity. In fact, it was couched exactly
11 that way. That there's two types of investments:
12 There's investments, and there's opportunities. And
13 this is an opportunity. It's so good, it's so solid,
14 it's so -- it is so skewed to the side of the lenders
15 and how much money they're going to make that this is
16 a no-miss situation.

17 Q. Were you at any time prior to either of your
18 investments in 1998 told that the principals had
19 already failed to close on prior commitments for
20 financing?

21 A. Prior to January, no. None of the former
22 dealings. But from January on, yes, I was actually in
23 the loop, and I asked a lot of questions. So from
24 that point on, I was pretty much given at least an
25 outline of what was happening. I don't know exactly

1 who met who or how solid these deals were, but I was
2 told of a succession of possible lenders that were
3 coming through and who was showing the most interest.

4 Q. And were you told that any of these
5 commitments had actually failed or were you given some
6 other explanation?

7 A. Most of the time, the situation was told that
8 whatever lender was about to sign was having this
9 problem or that problem. A lot of times they were
10 personal problems. A lot of times they were business
11 problems. But it was okay because we have two more
12 people that are really interested in the project. And
13 that these delays might actually be beneficial.

14 In fact, I was not going to invest again in
15 July and had told Mr. Testino that and Mr. Stedman.
16 But the way it was presented to me was that the delays
17 were actually beneficial to the project because a
18 company called -- I think they were called Coral
19 Energy Systems had come forward and were interested in
20 providing all the mechanical equipment for the project
21 as well as a contract for electrical generation that
22 was going to essentially save the project another \$8
23 million. And this was money that would also go into
24 the developers' pockets. So it was even a better deal
25 and thank God the first couple of lenders had not

1 signed because it was even better now.

2 Q. And that was in July of '98?

3 A. That was in July. And I had done some of my
4 own due diligence by telephone at that point and had
5 talked to the City of Dacono and the realtors and had
6 found out that the I-25 corridor was indeed heating up
7 and there was a lot of interest in that corridor. And
8 between my notes and what I was being told by Mr.
9 Testino and Mr. Stedman, whatever fears I had at that
10 time were somewhat nullified.

11 But, again, had I known the heavy
12 indebtedness of the project, if I'd known
13 Mr. Stedman's background, Mr. Decker's background, the
14 fact that 50 percent of that retail space was a
15 phantom retailer that didn't even exist, that they
16 would have to find somebody to buy the \$2 million in
17 junk bonds just to activate the sale of the municipal
18 bonds, that the infrastructure really wasn't in place
19 or was at least questionable at that time, that they
20 didn't have all the site plans, engineering plans and
21 architectural plans in place, I would have never done
22 this deal.

23 Q. What effect has had investment had on your
24 way of life?

25 A. Besides making it miserable? I've sold off