

WILLIAM A. MUNDELL
CHAIRMAN



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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JIM IRVIN
COMMISSIONER

MARC SPITZER
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ARIZONA CORPORATION COMMISSION

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DIRECTOR

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AZ CORP COMMISSION
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DOCKETED

MAY 14 2002

MEMORANDUM

DOCKETED BY

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

FROM: Mark Sendrow
Director of Securities

OPEN MEETING ITEM

5/23/02

DATE: May 8, 2002

RE: Docket No. S-03449A-01-0000, 21st Century Satellite Communication, Inc., et al.

Proposed Order To Cease And Desist, Order Of Restitution and Order For Administrative Penalties Re: Respondent Howard S. Baldwin

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties for Respondent Howard S. Baldwin ("BALDWIN"). The Order requires BALDWIN to cease and desist his activity, to pay \$47,164.13 in restitution to investors and to pay a penalty of \$5,000. The other three Respondents in this action have entered into a consent order, or are subject to a default order, also scheduled for this Open Meeting.

BALDWIN, a Scottsdale, Arizona resident, is an Arizona licensed insurance agent. BALDWIN sold promissory notes from Respondent 21st Century Satellite Communications, Inc. ("21st CENTURY") from 1998-2000 and viatical settlement contracts from 1997-1999.

21st CENTURY is a Florida based company that allegedly installed satellite antenna equipment at gated communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide. \$262,000 of the notes were sold in Arizona. 21st CENTURY offered its promissory notes through marketing agents, such as Respondents GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS") and GLENN A. LIBERATORE ("LIBERATORE"), who recruited sales agents such as BALDWIN. The 21st CENTURY promissory notes stated that interest payable to the note holders was 13% per annum. The notes offered were generally for five year terms. RESPONDENTS sold 16 promissory notes to 14 Arizona investors for a total investment of \$262,000. The notes were sold from April 1998 through February 2000. BALDWIN received \$31,440 in commissions from the sale of the promissory notes.

21st CENTURY made interest payments until October 2000, when it defaulted on its notes. No interest payments have been made since that time. No investor has received his or her principal back from 21st CENTURY.

On October 12, 2001, after the Division filed its Notice, the United States Securities and Exchange Commission sued 21st CENTURY and two of its officers for violation of the Federal securities laws for selling the promissory notes. 21st CENTURY and its two officers agreed to entry of judgment against them. 21st CENTURY then filed for bankruptcy. A plan of reorganization has been approved in the bankruptcy that anticipates that the note holders will receive a portion of their principal back.

BALDWIN also sold viatical settlement contracts to 11 Arizona investors for a total principal investment of \$356,335.14. BALDWIN received a total of \$15,724.13 in commissions.

The attached Order finds that BALDWIN violated A.R.S. §§ 44-1841, 44-1842 and 44-1991. The note investors were told that there was little risk from the notes as the notes were secured by a UCC-1 that would be filed by 21st CENTURY. They were not informed that the promissory notes were not registered as securities in Arizona or exempt from registration, nor were they informed of the financial incentives that RESPONDENTS received for selling the promissory notes and were not provided full disclosure regarding the investment including risk, business and financial background of 21st CENTURY, prospectuses or financial statements. With respect to the viatical settlement contracts, the Order finds that BALDWIN failed to provide full disclosure that the medical reports on the viators were outdated, failed to provide adequate disclosure statements, prospectuses or financial statements of the viatical service providers including but not limited to past operations, balance sheets, statements of income, retained earnings, cash flows and uses of proceeds that would reflect the financial position of these entities and failed to disclose the fees and commissions payable to sales agents, medical advisors, or any other participants in the program.

The Order requires BALDWIN to cease and desist his activity, to pay restitution of \$47,164.13, the amount of his commissions, plus a penalty of \$5,000. The restitution will go to the purchasers of the promissory notes and viatical settlement contracts. BALDWIN agrees that he will not apply for licensure as a securities salesman or investment adviser for five years. He also agrees that he will not exercise any control over any entity that offers or sells securities or provides investment advisory services, within or from Arizona, for five years.

The Division recommends approval of the Order. BALDWIN is required to disgorge all commissions he made from the sale of the investments, in addition to payment of a \$5,000 penalty. Additionally, the Order will be sent to the Department of Insurance for its review of BALDWIN's acts.

Originator: Mark Dinell

Attorney General: Moira McCarthy

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

6 In the matter of:)
7)
7 21st CENTURY SATELLITE)
8 COMMUNICATIONS, INC.)
8 14910 Winding Creek Court, Suite 101A)
9 Tampa, Florida 33613)
10 HOWARD S. BALDWIN)
10 5926 E. Lewis Av.)
11 Scottsdale, AZ 85257)
12 GLENN A. LIBERATORE FINANCIAL)
12 SERVICES)
13 165 W. Canyon Crest Rd., Suite 305)
13 Alpine, UT 84004)
14 GLENN A. LIBERATORE)
14 165 W. Canyon Crest Rd., Suite 305)
15 Alpine, UT 84004,)
16 Respondents.)

DOCKET NO. S-03449A-01-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES
AND CONSENT TO SAME
BY: RESPONDENT HOWARD S.
BALDWIN**

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18 RESPONDENT HOWARD S. BALDWIN ("BALDWIN") elects to permanently waive his
19 right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-
20 1801, *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order Of Restitution,
21 Order For Administrative Penalties And Consent To Same ("Order"). BALDWIN admits the
22 jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the
23 Findings of Fact and Conclusions of Law contained in this Order but agrees that he shall not challenge
24 the validity of the Findings of Fact and Conclusions of Law in any present or future administrative
25 proceeding before the Commission or any other state agency concerning the denial or issuance of any
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1 license or registration required by the State to engage in the practice of any business or profession; and
2 consents to the entry of this Order by the Commission.

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4 I.

5 **FINDINGS OF FACT**

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7 1. BALDWIN is an Arizona resident, residing at 5926 E. Lewis Av., Scottsdale, AZ 85257.
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9 The 21st CENTURY Promissory Notes

10 2. Respondent 21st CENTURY SATELLITE COMMUNICATIONS, INC. ("21st
11 CENTURY") is a Florida based company that allegedly installed satellite antenna equipment at gated
12 communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY
13 began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide.
14 \$262,000 of the notes were sold in Arizona. 21st CENTURY offered its promissory notes through
15 marketing agents, such as Respondent GLENN A. LIBERATORE FINANCIAL SERVICES
16 ("GALFS") GALFS and Respondent GLENN A. LIBERATORE ("LIBERATORE"), who recruited
17 sales agents such as BALDWIN. The 21st CENTURY promissory notes stated that interest payable to the
18 note holders was 13% per annum. The notes offered were generally for five year terms. In addition, some
19 investors received promises of an additional profit incentive. That additional profit incentive provided
20 that the investor would receive 25% of 21st CENTURY's profit, in proportion to the amount the investor
21 invested compared to the total capital cost of equipment. Despite such a promise, as of this date no
22 Arizona investor received any return from the profit incentive.

23 3. On or about February 18, 1998, BALDWIN, an Arizona insurance agent, entered into an
24 agreement with GALFS, for him to sell the 21st CENTURY promissory notes to his clients. That
25 agreement gave BALDWIN commissions of 12%. In operating under the agreement with GALFS,
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1 BALDWIN primarily utilized information concerning 21st CENTURY that was provided by
2 LIBERATORE .

3 4. GALFS, LIBERATORE and BALDWIN participated in the sale of 16 promissory notes
4 to 14 Arizona investors for a total investment of \$262,000. The notes were sold from April 1998
5 through February 2000. BALDWIN received \$31,440 in commissions from the sales of the 21st
6 CENTURY promissory notes.

7 5. The investors were told that there was little risk from the notes as the notes were secured
8 by a UCC-1 that would be filed by 21st CENTURY. They were not informed that the promissory notes
9 were not registered as securities in Arizona or exempt from registration, nor were they informed of the
10 financial incentives that BALDWIN received for selling the promissory notes and were not provided
11 full disclosure regarding the investment including risk, adequate disclosure statements, prospectuses or
12 financial information.

13 6. 21st CENTURY made interest payments until October 2000, when it defaulted on its
14 notes. No interest payments have been made since that time. No investor has received his or her
15 principal back from 21st CENTURY. Despite the existence of the UCC paperwork, no security has
16 been foreclosed upon on behalf of any investor.

17 7. On October 12, 2001, the United States Securities and Exchange Commission sued 21st
18 CENTURY and two of its officers for violation of the Federal securities laws for selling the promissory
19 notes. 21st CENTURY and its two officers agreed to entry of judgment against them. 21st CENTURY
20 then filed for bankruptcy. A plan of reorganization has been approved in the Federal Bankruptcy Court
21 that anticipates that the note holders will receive shares of stock in a new company and a portion of
22 their principal back in cash.

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The Viatical Policies

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8. In 1997-99, BALDWIN sold viatical settlement contracts to Arizona investors. He sold the viatical settlement contracts to 11 Arizona investors for a total principal of \$356,335.14. BALDWIN received a total of \$15,724.13 in commissions.

9. In connection with the sales of the viaticals, BALDWIN failed to inform the investors of certain material facts that may have influenced the investors' decision to invest in the viaticals, including:

a) Not informing investors that they would need to pay the insurance policy premiums if the viator lived longer than expected;

b) The fact that investors who made investments with IRA funds might be required to make required withdrawals from the IRA even if the viator was still alive if the investor reached the age of required distribution;

c) The fact that the investment is illiquid and there may be no public market available for resale or other disposal of the security;

d) The fact that certain policies, such as group policies, may be subject to change, and may not provide returns as promised;

e) The fact that the investment may not be suitable for persons who have a need for a regular income from their investments.

10. BALDWIN failed to provide full disclosure that the medical reports on the viators were outdated, failed to provide adequate disclosure statements, prospectuses or financial statements of the viatical service providers including but not limited to past operations, balance sheets, statements of income, retained earnings, cash flows and uses of proceeds that would reflect the financial position of these entities and failed to disclose the fees and commissions payable to BALDWIN, medical advisors, or any other participants in the program.

II.

CONCLUSIONS OF LAW

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

5 2. BALDWIN offered or sold securities within or from Arizona, within the meaning of
6 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

7 3. BALDWIN violated A.R.S. § 44-1841 by offering or selling securities that were neither
8 registered nor exempt from registration.

9 4. BALDWIN violated A.R.S. § 44-1842 by offering or selling securities while neither
10 registered as a dealer or salesman nor exempt from registration.

11 5. BALDWIN violated A.R.S. § 44-1991 by offering or selling securities within or from
12 Arizona by making untrue statements or misleading omissions of material facts. In connection with the
13 21st CENTURY Promissory Note sales, BALDWIN's conduct includes, but is not limited to, the
14 following:

- 15 a) Failing to disclose the financial incentives he received for selling the promissory notes;
16 b) Failing to provide full disclosure regarding the risk of the investment, including the
17 potential to lose principal; the possibility that no assets existed to secure the UCC filings
18 and the riskiness of investing in a company with a limited track record;
19 c) Failing to provide investors with adequate disclosure statements, prospectuses or
20 financial statements including but not limited to past operations, balance sheets,
21 statements of income, retained earnings, cash flows and uses of proceeds that would
22 reflect the financial position of 21st CENTURY.

23 In connection with the viatical settlement policies, BALDWIN's conduct includes, but is not limited to,
24 the following:

- 25 a) Failing to inform investors that the viatical settlement policies were not registered as
26 securities in Arizona and were not exempt from registration;

1 b) Failing to provide full disclosure regarding the investment including such as:

- 2 i. the fact that the investment is illiquid and there may be no public market
- 3 available for resale or other disposal of the security;
- 4 ii. the fact that certain policies, such as group policies, may be subject to
- 5 change, and may not provide returns as promised;
- 6 iii. the fact that the investment may not be suitable for persons who have a
- 7 need for a regular income from their investments;
- 8 iv. the fact that all involved parties, such as GALFS, LIBERATORE and
- 9 BALDWIN, and any medical advisors or other participants receive their
- 10 commissions and fees from the investment up front;
- 11 v. the fact that an investment made with IRA funds may require mandatory
- 12 withdrawals before the investment itself matures, thereby causing
- 13 potentially adverse tax issues for the investor.

14 c) Failing to provide adequate disclosure statements, prospectuses or financial statements of
15 the viatical service providers including but not limited to past operations, balance sheets,
16 statements of income, retained earnings, cash flows and uses of proceeds that would
17 reflect the financial position of these entities.

- 18 6. BALDWIN's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
- 19 2032.
- 20 7. BALDWIN's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
- 21 2032.
- 22 8. BALDWIN's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

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III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and BALDWIN's consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that BALDWIN permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that BALDWIN shall pay restitution to investors shown on the records of the Commission in the amount of \$47,164.13. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that BALDWIN shall pay an administrative penalty in the amount of \$5000.00, payable to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in

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1 full. If BALDWIN does not comply with this order for administrative penalties, any outstanding
2 balance may be deemed in default and shall be immediately due and payable.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of
13 Phoenix, this _____ day of _____, 2002.

14 _____
15 BRIAN C. McNEIL
16 Executive Secretary

17 _____
18 DISSENT

19 This document is available in alternative formats by contacting Shelly M. Hood, Executive Assistant to
20 the Executive Secretary, voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

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CONSENT TO ENTRY OF ORDER

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2 1. RESPONDENT HOWARD S. BALDWIN ("BALDWIN") admits the jurisdiction of
3 the Commission over the subject matter of this proceeding. BALDWIN acknowledges that he has been
4 fully advised of his right to a hearing to present evidence and call witnesses and BALDWIN knowingly
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative
7 Code. BALDWIN acknowledges that this Order To Cease And Desist, Order Of Restitution, Order For
8 Administrative Penalties And Consent To Same ("Order") constitutes a valid final order of the
9 Commission.

10 2. BALDWIN knowingly and voluntarily waives any right he may have under Article 12 of
11 the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. BALDWIN acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. BALDWIN acknowledges that he has been represented by counsel in this matter, he has
16 reviewed this Order with his attorney and understands all terms it contains.

17 5. BALDWIN neither admits nor denies the Findings of Fact and Conclusions of Law
18 contained in this Order. BALDWIN agrees that he shall not challenge the validity of the Findings of
19 Fact and Conclusions of Law in any present or future administrative proceeding before the
20 Commission or any other state agency concerning the denial or issuance of any license or registration
21 required by the State to engage in the practice of any business or profession.

22 6. BALDWIN agrees not to take any action or to make, or permit to be made, any public
23 statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or
24 creating the impression that this Order is without factual basis.

